TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 550

FREDDIE EUBANKS, PETITIONER,

vs.

STATE OF LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR CERTIORARI FILED JUNE 19, 1957

CERTIORARI GRANTED OCTOBER 14, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 550

FREDDIE EUBANKS, PETITIONER,

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INDEX

[fol. 1]

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA

THE STATE OF LOUISIANA, SS:

INDICTMENT—June 8, 1954

The Grand Jurors of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, present that one FREDDIE EUBANKS (Alias FREDDIE HUBANK) late of the Parish of Orleans on or about the 24th day of May in the year of our Lord, one thousand, nine hundred fifty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans murdered one Mrs. Mabel E. Gordy Clarkson contrary to the form of the Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

(Signed) Leon D. Hubert, Jr., District Attorney for the Parish of Orleans.

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

ENDORSEMENTS ON INDICTMENT

No. 146-235 Section "F"

STATE OF LOUISIANA

versus

FREDDIE EUBANKS (Alias Freddie Hubank)

Indictment for Vio. R. S. 14:30 (Murder)

A True Bill.

(Signed) Maurice J. Hartson, Jr., Foreman of Grand Jury.

New Orleans, June 8th, 1954.

Returned into open Court and recorded and filed June 8th, 1954.

(Signed) Henry D. Adams, Minute Clerk.

Arraigned August 16, 1954, and pleaded not guilty. The court granted the defendant 10 days to file special pleadings.

(Signed) W. J. Hammer, Minute Clerk.

[fol 2] June 14, '54. The defendant being without counsel the court ordered this arraignment cont'd to June 15, '54.

June 15, '54. The defendant still being without counsel, the court ordered this arraignment continued to Sept. 1, '54.

Aug. 10, '54. Upon request of the defendant for counsel, the court appointed H. Garon, Esq., and J. A. Gowan, Esq., to represent the defendant in this matter. The court ordered this arraignment cont'd to August 16, '54, in order to allow defendant time to see counsel. (Notify counsel of appointment)

(Signed) W. J. Hammer, Minute Clerk.

August 25, '54. J. A. Gowan, Esq., counsel for and on behalf of the defendant this day filed with the court the following motions: Prayer for Oyer, Motion to Quash, Application for Particulars, Motion to inspect the premises, motion to inspect weapons. The court ordered that all of the above motions be specially fixed for hearing on Sept. 8, '54.

(Signed) W. J. Hammer, Minute Clerk.

Sept. 2, '54. (See attached sheet for further endorsements) The state did this day file written answer to the defendant's application for particulars; Prayer for Oyer; Motion to Inspect the premises; and Motion to inspect alleged murder weapons. The state did not file written answer to defendant's motion to Quash. On motion of the defense, the court ordered these matters continued for hearing to September 17th 1954, in order to allow the defense time in which to study the answers so filed by the state.

(Signed) W. J. Hammer, Minute Clerk.

[fol. 3] Sept. 17, '54. On motion of defense, hearing on defendant's motion to quash cont'd. as an open matter without date. The court informed the defense that it (the court) would give rulings on defendant's motion for particulars, Prayer for Oyer, Motion to Inspect Premises and Motion to inspect murder weapons, at a later date.

(Signed) W. J. Hammer, Minute Clerk.

Jan. 4, '55. Hearing held on defendant's motion to quash. Matter being submitted by both sides and taken under advisement by the court to January 7, 1955.

(Signed) W. J. Hammer, Minute Clerk.

Jan. 7, '55. Supplemental motion to quash filed by defense. Argued and submitted along with original motion to quash. Taken under advisement by the court until Wed. January 12, '55.

(Signed) W. J. Hammer, Minute Clerk.

Jan. 12, '55. The court denied all pending motions and supplemental motions. The court allowed counsel for defendant 10 days to file certain exhibits in the record. The defendant then re-entered his plea of not guilty. Joint motion state and defense, specially fixed for trail on March 21, 1955. Notify all witnesses.

(Signed) W. J. Hammer, Minute Clerk.

February 28, 1955. J. Gowan Esq., counsel for and on behalf of the defendant, Freddie Eubanks this day filed with the court an application for the appointment of a Lunacy Commission. The court ordered the same matter specially fixed for hearing on March 10, 1955.

(Signed) W. J. Hammer, Minute Clerk.

March 11, 1955. Motion of defense cont'd as an open matter on the Application for appointment of a Lunacy Commission until Monday, March 14, '55.

(Signed) W. J. Hammer, Minute Clerk.

[fol. 4] March 14, '55. Submitted by both sides, whereupon, the court denied the application for a Lunacy Commission. The def. then reinstated his plea of not guilty.

(Signed) W. J. Hammer, Minute Clerk.

Mar. 21, 1955. The defendant through his counsel now enters a plea of not guilty by reason of insanity. Counsel for defendant further files application for the appointment of a Lunacy Commission to inquire into the deft's mental status at the time of the commission of the offense. The said motion being joined in by the state. The court granted

the application for the appointment of said commission and did so this day appoint said commission (see record) Joint motion of State and defense, this case then specially fixed for trial on April 25, '55. Notify all witnesses.

(Signed) W. J. Hammer, Minute Clerk.

April 21, '55. Dr. H. Tharp Posey appointed additional member of Lunacy Commission. (see record)

(Signed) W. J. Hammer, Minute Clerk.

April 25, '55. Joint motion state and defense, cont'd & specially fixed for trial on May 31, 1955. (Notify all witnesses)

(Signed) W. J. Hammer, Minute Clerk.

May 31, 1955. By agreement between state and defense, this case continued to Monday, June 27th, 1955.

(Signed) Jack J. Granan, Acting Minute Clerk.

June 27, '55. Jury impaneled in trial of this case. State presented a part of its case. Recessed 6:20 p.m. this date, until 10:00 a. m. Tuesday June 28, '55.

(Signed) W. J. Hammer, Minute Clerk.

[fol. 5] June 28, '55. Commenced 10:30 a.m. Recessed 10:15 p.m. until June 29, '55 at 10:00 a.m.

W. J. H.

July 1, 1955. Guilty as charged.

(Signed) Robert S. Reichart, Foreman.

July 1, '55. Verdict of jury recorded and filed. Defendant remanded to await further legal proceedings.

(Signed) W. J. Hammer, Minute Clerk.

July 5, '55. Motion of Jos. A. Gowan, Esq., the court permitted said counsel to withdraw as attorney for the defendant.

(Signed) W. J. Hammer, Minute Clerk.

February 24, '56. Motion for New Trial filed & submitted by defense and denied by the court. Motion in arrest of

judgment filed and submitted by defense and denied by the court. H. Garon Esq., counsel for the deft. herein, herewith filed with the court 32 formal bills of exception (including bill of exception to court's ruling on motion for new trial and motion in arrest of judgment). The court informed the defense that the court would like time to consider and study the bills of exception so filed, and would not sign bills until a later date to be set by the court.

(Signed) W. J. Hammer, Minute Clerk.

May 2, 1956. The court signed all of the said bills of exception on May 1, 1956. The court signed on May 1, 1956, and ordered filed its Per Curiams to said bills of exceptions this date. The deft. being ready for sentence the court sentenced the deft. to death by electrocution (see record for sentence). H. Garon Esq., then filed with the court a motion for suspensive appeal, which was signed by the court with date returnable being June 28, 1956. Pending suspensive [fols. 6-12] appeal deft. remanded without the benefit of bail.

(Signed) W. J. Hammer, Minute Clerk.

Filed: Aug. 25, '54.

(Signed) W. J. Hammer, Minute Clerk.

Motion for Inspection of Alleged Murder Weapons

On motion of Freddie Eubanks in his own proper person and assisted by his counsel herein Herbert J. Garon and Joseph A. Gowan, and on suggesting to the Court that he is formally indicted in the above entitled proceeding; and on further suggesting that the defendant is unable to properly prepare his defense herein until he is permitted through his said counsel to inspect and examine any and all alleged murder weapons, and object or objects upon which alleged finger print or prints or hand print or prints may be found, which are either in the possession of the Clerk of Criminal District Court or the Coroner's office, or the Police Department or the District Attorney's office.

And that defendant herein, in the interest of justice, should be furnished an opportunity through his counsel to inspect and examine the above.

It is ordered by the Court that the State of Louisiana, through the District Attorney's office, the Clerk of the Criminal District Court, the Superintendent of Police, of the New Orleans Police Department, and the Coroner, do show cause on the 8th day of August 1954, why they should not furnish the defendant through his counsel any and all weapons that are connected in any way with the above entitled proceedings for the purpose of examination and inspection of same.

New Orleans, La., this 25 day of August 1954.

(Signed) Niels F. Hertz, Judge.

[fol. 13] IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

MINUTE ENTRY OF MARCH 1, 1954 SECTION "D."

IMPANELLING OF GRAND JURY

Pursuant to adjournment, court convened this day at half-past ten o'clock, A.M.

Present, Frank T. Echezabal, Judge;

Present, Severn T. Darden, District Attorney;

Present, George J. Gulotta, Executive Assistant District Attorney;

Present, Edward A. Haggerty, Jr., First Assistant District Attorney;

Present, James P. Screen, Assistant District Attorney;

Present, Morey L. Sear, Assistant District Attorney;

Present, Henry D. Adams, Minute Clerk.

In re: Grand Jury

From a list of seventy-five names furnished it by the Board of Jury Commissioners of the Parish of Orleans on the nineteenth day of February 1954, the court this day in open court selected the following twelve citizens to serve as

grand jurors in and for the Parish of Orleans for the grand jury term beginning this day, (March 1st., 1954) :—

Maurice John Hartson, Jr., Mrs. Doris Francis Fleming, Claude Charles Langwith, Jr., Geo Marc Bezou, Alvin Doize Fournier, David George Laux, Sr., Allen Byrd Cambre, Theodore Frank Haller, Albert F. Sanchez, Albert Henri Duffourc, Lewis Millsaps Harkey, Walter Joseph Sarrat.

The minute clerk administered the following oath to the twelve citizens aforenamed, who were selected and appointed by the court, as aforesaid, grand jurors for the Parish of Orleans for the grand jury term beginning this day, March 1st., 1954:—

OATH

"Do each of you solemnly swear that you will diligently inquire and true presentment make of such matters and things as shall be given to the grand jurors in charge, or otherwise come to your knowledge; that you will keep secret your own counsel, that of your fellows and that of the state; [fol. 14] that you will not leave any one unpresented from fear, favor, affection, hope of reward, or gain, but will present all things truly, as they come to your knowledge, according to the best of your understanding. So help you God."

To which oath each of the said grand jurors assented. Then the court appointed Maurice John Hartson, Jr., Esq., foreman of the said grand jury. Then the judge read his charge to the grand jury, and the minute clerk served upon each grand juror a copy thereof, and a copy of said charge has been filed with the Honorable Edward A. Haggerty, Sr., Clerk of Court.

The court informed the grand jury that they could adjourn subject to call.

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

MINUTE ENTRIES RE ARRAIGNMENT AND PLEA—June 14, 1954

No. 146-235

STATE OF LOUISIANA

VS.

FREDDIE EUBANKS

Indictment for violating R.S. 14:30

The defendant being unrepresented by counsel, the court ordered this arraignment continued to Tuesday June 15th., 1954, and the defendant remanded.

June 15, 1954

The defendant upon being placed before the bar for arraignment, informed the court that he did not have as yet employed counsel, but was attempting to through his family. The court ordered this arraignment continued to September 1st., 1954 and the defendant, Remanded.

[fol. 15] August 10, 1954

The defendant unaccompanied by counsel was placed at the bar of the court for arraignment. The defendant informed the court that he was unable to obtain counsel, whereupon, the court appointed, H. Garon Esq., and R. Gowan Esq., to represent the defendant in this matter. The court ordered this arraignment continued to August 16th., 1954, in order to allow the defendant, to confer with his counsel. The defendant was then remanded.

August 16, 1954

The defendant accompanied by his counsel J. A. Gowan Esq., was placed at the bar of the court for arraignment. The clerk read the indictment to the defendant. The defendant pleaded Not Guilty. On motion of the defense, the court granted the defendant ten (10) judicial days in which to file special pleadings. The defendant was then remanded.

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

MINUTE ENTRIES RE MOTION TO QUASH, ETC.—August 25, 1954

Jos. A. Gowan Esq., counsel for and on behalf of the defendant, did this day file with the court the following motions to wit: Prayer for oyer; motion to Quash; Application for a bill of particulars; motion to inspect the premises; motion to inspect the alleged murder weapon. The court ordered that all of the aforementioned matters be specially fixed for hearing, contradictorily, on September 8th, 1954.

[fol. 16] September 8th, 1954

The defendant accompanied by his counsel, H. Garon, Esq., and J. Gowan Esq., was placed at the bar of the court. The state did this day file written answers to the defendant's Application for particulars; Prayer for Oyer; Motion to inspect the premises; and Motion to inspect the alleged murder weapons. The state did not file written answer to the defendant's motion to Quash. On motion of the defense, the court ordered these matters continued for hearing on September 17th., 1954, in order to allow the defense time in which to study the Answers so filed by the state. The defendant was then ordered, remanded.

September 17, 1954

The defendant accompanied by his counsels, J. Gowan Esq., and H. Garon Esq., was placed at the bar of the court for hearing on, Application for particulars, Prayer for Oyer, Motion to inspect the premises, Motion to inspect Murder weapons and a Motion to Quash. The state having already on September 8, 1954, filed written answers to all of the above motions, excepting the Motion to Quash. Both sides argued and submitted, the application for particulars, Prayer for Oyer, Motion to inspect the premises, and motion to inspect the murder weapons. The court informed both sides, that it (the court) would render rulings in these matters at a later date. On defendant's motion to Quash: Wm. P. Dillon, Mac A. Dyer, Ernest O. Becker, Walter E. Douglas, V. G. Warner and Dudley Desmare, were duly sworn by the clerk, testified on the part of the defense and were cross-examined on behalf of the state.

[fol. 17] In connection with the testimony of Mr. Dyer, the defense introduced in evidence the following: a writ-

ten memorandum to Mr. Dyer, D-1. there being no objection by the state. At this point and on motion of the defense, acquiesed in by the state, the court ordered this matter (motion to Quash) continued as an open matter without date in order to allow both state and defense time in which to produce additional witnesses. The court then ordered the defendant remanded.

January 4, 1955

The defendant accompanied by his counsel H. Garon Esq., was placed at the bar of the court. This matter comes before the bar for hearing on defendant's motion to Quash. A. Dallem O'Brien, Judge Fred W. Oser, Judge Geo. P. Platt, Judge Frank Echezabal, Judge Wm. J. O'Hara and Judge J. Bernard Cocke, were duly sworn by the clerk, Testified on the part of the defense and were cross-examined on behalf of the State. On motion of the defense, the court ordered the minutes of Section "D" of this court of March 1, 1954 as pertaining to the empanelling of the Grand Jury be introduced in evidence. There were numerous stipulations, made by State and Defense as to what the testimony of certain witnesses would be had said witnesses testified in these Proceedings. (All as noted by the stenographer). This matter was then submitted by both sides, whereupon, the court took the matter under advisement until January 7, 1955, and ordered the defendant, remanded.

January 7, 1955

[fol. 18] The defendant accompanied by his counsel H. Garon Esq., was placed at the bar of the Court. The defendant through his counsel filed with the court a supplemental motion to Quash. The defense argued the Motion to Quash and the Supplemental motion to Quash and then submitted the matters. The court took all pending matters, under advisement until Wednesday January 12, 1955 and ordered the defendant remanded.

January 12, 1955

The defendant, accompanied by his counsel H. Garon Esq., was placed at the bar of the court. The following

motions, previously filed on behalf of the defendant were this day Denied by the court: Motion to Quash, Supplemental motion to Quash, Motion to inspect the premises, Motion to inspect murder weapon, Prayer for Oyer and motion for a bill of particulars. To which ruling of the court counsel for the defendant objected and reserved bills of exception (as noted by stenographer). The court granted the defendant, ten (10) days in which to file certain exhibits in support of motions previously filed. The defendant through his counsel then re-entered his plea of Not Guilty. Joint motion State and defense, this case specially fixed for trial on March 21st., 1955, and the defendant remanded.

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

MINUTE ENTRIES RE LUNACY HEARING AND PLEA—February 28, 1955.

J. Gowan Esq., counsel for and on behalf of the defendant, this day filed with the court application for the appointment of a lunacy commission in this matter. The court ordered that this matter be specially fixed for hearing on March 10, 1955.

[fol. 19] March 11, 1955

The defendant accompanied by his counsel Jos. A. Gowan, Esq., was placed at the bar of the court on the question of defendant's application for a lunacy commission. Jos. A. Gowan Esq., was duly sworn by the clerk testified on the part of the defense and was cross-examined on behalf of the state. Dr. N. J. Chetta and deputy sheriff Roy Augustine, were duly sworn by the clerk testified on the part of the state and were cross-examined on behalf of the defense. It was stipulated and agreed by both state and defense, as to what the testimony of Dr. J. Eigenborg, would be had the said Dr. Eigenborg testified as a witness in this matter. (As noted by the stenographer). In connection with the testimony of Dr. Chetta, the state introduced in evidence a letter written by Dr. Chetta, addressed

to Mr. Compagno, dated March 3, 1955, and marked, S-1, no objection by the defense. On motion of the defense the court ordered this hearing continued as an open matter to Monday, March 14, 1955 and the defendant remanded.

March 14, 1955

The defendant accompanied by his counsel Jos. Gowan Esq., was placed at the bar of the court, this matter comes before the bar, on defendant's application for a lunacy commission, which was continued from Friday March 11, 1955 until to-day as an open matter. The matter was then submitted by both state and defense, whereupon, the court Denied the application for a lunacy commission, to which ruling of the court counsel for the defendant objected and reserved a bill of exceptions. The defendant then reinstated his plea of not guilty, the court then ordered the defendant remanded.

[fol. 20] March 21, 1955

The defendant through his counsel Jos. Gowan Esq., and Herbert Garon Esq., (by way of written motion filed with the court) this day entered a plea of Not Guilty by reason of insanity. Counsel for the defendant, and acquiesed in by the State, filed with the court an application for the appointment of a lunacy commission to inquire into the mental status of the defendant at the time of the commission of the alleged offense. The court granted the application for the appointment of a lunacy commission and issued the following order, to wit:

The existence of insanity or mental defects on the part of the defendant at the time of the alleged commission of the offense charged having become an issue in this cause (the defendant through his counsel having, in addition to having entered a plea of not guilty, also entered a plea of not guilty by reason of insanity at the time of the alleged commission of the offense), the court hereby appoints Dr. Nicholas Chetta, Coroner, and Dr. C. S. Holbrook, 3431 Prytania Street, physicians, to proceed to an investigation of the mental status of the defendant as of the date of the alleged offense, to wit: on or about May 24, 1954.

The said physicians shall have the right of free access to the defendant now in the parish prison, at all reasonable times; and, shall have full power and attorney to summon witnesses and to enforce their attendance. Said Physicians shall have within thirty days from this date to make their report in writing to this court as to the mental status of the defendant as of the date of the alleged offense, to wit: on or about May 24, 1954.

(Signed) Niels F. Hertz, Judge.

New Orleans, La., March 21, 1955.

[fol. 21] On joint motion State and defense the court ordered that this matter be specially fixed for trial on April 25, 1955, and the defendant remanded.

April 21, 1955

The court supplementing its own order of March 21, 1955, did this day issue the following order:

It is ordered that Dr. H. Tharp Posey, a physician and psychiatrist of the City of New Orleans be and he hereby appointed by the court to inquire into and determine the mental status of Freddie Eubanks as of the date of the Commission of the offense of which he is charged or on or about May 24, 1954. He shall have the right of free access of the defendant now in the parish prison, at all reasonable times; and, shall have full power and attorney to summon witnesses and to enforce their attendance. He shall have within thirty days from this date to make his report in writing to this court.

(Signed) Niels F. Hertz, Judge.

New Orleans, La., April 21, 1955.

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

MINUTE ENTRIES OF TRIAL—April 25, 1955

On joint motion of the state and the defense, the court ordered this case continued and specially fixed for trial on May 31, 1955 and the defendant remanded.

May 31, 1955

[fol. 22] The defendant, attended by his counsel, Joseph Gowan, Esq., appeared at the bar of the court for trial. By agreement between the state and counsel for the defendant, the court ordered the trial of this case, continued to Monday, June 27th, 1955. Defendant remanded to await trial.

June 27, 1955

The defendant accompanied by his counsel Jos. Gowan Esq., and Herbert Garon Esq., was placed at the bar of the court for trial. The State of Louisiana being represented by Leon D. Hubert and Adrian G. Duplantier, District Attorney and First Assistant District Attorney for the parish of Orleans, respectively. The State and the defense being ready for trial, the following named jurors, to wit: Desmond Boudreaux, Stanley Brettel, Chas. Brown, Whitney Buras, Robert Byrne, Jr., Thorn Himel, James Kent, Gerard Maerke, Gerard McGinn, Harold Newman, Edw. Patterson and Robert Reichert, were regularly accepted duly sworn and empanelled to serve as jurors in this case. Five (5) challenges for the State, and Five (5) used by defense, nineteen (19) excused for cause and four (4) by consent. The judge having directed that an alternate juror be selected, after the jury had been empanelled and sworn all in accordance with R. S. 15:362, recalled said order after the jury panel had been exhausted. Counsel for the defendant, filed with the court a request for a written charge, which said request was Granted by the court. The clerk read the indictment to the jury. Mr. Hubert made the State's opening statement. Mr. Garon, made an opening statement on behalf of the defendant. Felix Schilleci, Mrs. Kay L. Elmore, Dr. J. Medina, Off. P. Constantine and Sgt. J. Spill-
[fol. 23] man, were duly sworn by the clerk, testified on the part of the State and were cross-examined on behalf of

the defense. In connection with the testimony of Felix Schelleci, the state introduced and the court ordered filed in evidence, the following: a photo of the Victim, S-1, to which aforementioned introduction counsel for the defendant objected, which objection was overruled by the court, to which ruling counsel for the defendant reserved a Bill of exceptions. In connection with the testimony of Dr. I. Medina, the state introduced and the court ordered filed in evidence, the following: The Proces Verbal, S-2. To which aforementioned introduction, counsel for the defendant, objected, which said objection was overruled by the court to which ruling of the court counsel for the defendant reserved a bill of exceptions. In connection with the testimony of Felix Schilleci, there was a motion for a Mistrial made on behalf of the defendant, Which said motion for a Mistrial was Denied by the Court, to which ruling of the court counsel for the defendant objected, and reserved a bill of exceptions. The hour being 6:20 P.M. the court ordered a recess in this trial until to-morrow (Tuesday June 28, 1955) at 10:00 A.M. The court ordered the jury retired into the custody of the Criminal Sheriff, after first instructing said jury as to the Law. The court ordered that the defendant be remanded to said time and date.

June 28, 1955

The defendant accompanied by his counsel, H. Garon Esq., and Jos. Gowan Esq., was placed at the bar of the court for trial. Mr. Hubert and Mr. Duplantier, being Present for the State. This matter having been recessed at 6:20 P.M. yesterday (June 27, 1955) until 10:00 A. M. this date. Both [fol. 24] sides being ready, the jury was placed in the jury box all being present as follows: Desmond Boudreaux, Stanley Brettel, Chas. Brown, Whitney Buras, Robert Byrne, Jr., Thorn Himel, James Kent, Gerard Maerke, Gerard McGinn, Harold Newmann, Edw. Patterson and Robt. Reichert. On motion of the State, Gerard Laughlin, Chas. Pecoraro, Frank. Valentinian, Thomas Johnson, Jos. Olivier, Sgt. R. Lampard, Off. Jesse Sarver, Off. J. Schnapp, Off. F. Lorenzen, Off. J. Canatella, Off. G. Kernan, Off. Wm. Dudenheifer, Off. M. Dummet, (A stipulation was made at this point, between State and defense as to what the testi-

mony of Off. John Mine, would be, had said officer actually testified in this matter), Off. D. Barret, Capt. Chas. Kincaid, Det. Wm. Stevens, Off. Jos. All, Off. Geo. Roux, Off. Geo. McDonald, Off. F. Lorensen, Off. Jacob Behrens, Off. Louis Markey, Off. Paul Datri, Off. John Delpuget, Off. Arthur James, Off. Jesse Sarver, Det. Edw. Hyde, Sgt. Robert Lampard, Dr. N. Chetta, Capt. Wm. Dowie and Sgt. James Leverne, were each duly sworn by the clerk, testified on the part of the State and were cross-examined on behalf of the Defense. In connection with the testimony of Gerard Laughlin, the state introduced and the court ordered filed in evidence, a photograph, identified as S-5 (no obj.). In connection with the testimony of Chas. Pecoraro, the state introduced and the court ordered filed in evidence, a photograph, identified, S-6. (no objection). In connection with the testimony of the aforementioned witness, the *Defense* introduced and the court ordered filed in evidence, a photograph, identified D-1. In connection with the testimony of Frank Valentinian, the State and Defense, jointly, introduced and the court ordered filed in evidence a photograph, identified D-2. In connection with the testimony of Capt. C. Kincaid, the state introduced, and the court ordered filed in evidence, a wash basin, identified, S-12, and a set of Palm Prints Photographs, S-13. (counsel for the defendant, objected to the introduction of S-12, which objection was overruled by the court, and a bill of exceptions reserved by the [fol. 25] defense. The defense offered no objection to S-13). In connection with the testimony of Det. Wm. Stevens, the State introduced and the court ordered filed in evidence the following: Two photographs, identified S-4, S-14. A piece of pipe, in a wood box container, identified, S-15, a semi-circle piece of metal contained in a brown envelope, identified, S-16, one electric fan, identified S17. (there being no objection to the aforementiond introductions, on behalf of the defense.) After the testimony of St. James Yeverne, the hour being 10:10 P.M. the court ordered a recess in this matter until to-morrow (June 29, 1955) at 10:00 A.M. The court instructed the jury as to the law, and then ordered the jury retired for the night into the custody of the Criminal Sheriff. The court then ordered the defendant remanded to said time and date.

June 29, 1955

The defendant accompanied by his counsel Jos. Gowan Esq., and Herbert Garon Esq., was placed at the bar of the court, for resumption of trial in this case. The trial of this case having been recessed from 10:10 P.M. June 28, 1955, until this day at 10:10 A.M. Mr. Hubert and Mr. Duplantier, being present for the State. The petty jury was then placed in the jury box, and all present as follows: Desmond Boudreaux, Stanley Brettel, Chas. Brown, Whitney Buras, Robt. Byrne, Jr., Thorn Himel, James Kent, Gerare Maerke, Gerard McGinn, Harold Newman, Edw. Patterson and Robt. Reichert. Both sides being ready to proceed, on motion of the State, Det. Wm. Stevens, was duly sworn by the clerk testified on the part of the state and was cross-examined on behalf of the defense. During the testimony of Det. Stevens, the Question of admissibility of an alleged written confes- [fol. 26] sion, was submitted by both sides, (the defense offering no evidence), whereupon, the court ruled, that the alleged written confession, was made freely and voluntarily and should go to the jury, to which ruling of the court, counsel for the defendant, objected and reserved a bill of exceptions. The state introduced and the court ordered filed the alleged written confession, S-18, 18a and 18b. Mr. Hubert then read the alleged written confession to the jury. In connection with the testimony of Det. Stevens, the state introduced and the court ordered filed in evidence, four (4) photographs, S-8, S-9, S-10, S-11, to which aforementioned introductions, counsel for the defendant objected and reserved bills of exception. At the conclusion of the testimony of Det. Stevens, the hour being 11:00 A.M. and on joint motion of the State and defense, the court ordered that, the court and jury be retired to view the scene of the alleged offense at 731 Iberville St. The said being done and the court and jury having finished the viewing of the said premises at 731 Iberville St. at the hour of 12:15 P.M. at which time the court ordered a recess for Lunch until 2:00 P.M. After lunch, the jury was placed in the jury box at 2:00 P.M. Both sides being ready, and on motion of the State, Peter G. Duncan, Chas. Pecoraro, Det. Wm. Stevens, Capt. Wm. Dowie, Off. J. B. Conrad, Mr. J. Matranga, Det. E. Hyde, Det. Wm. Stevens and Mr. B. V. Caro; were duly sworn by the clerk, testified on the part of the state and

were cross-examined on behalf of the defense. (With the one exception, of Chas. Pecoraro, who was called and sworn at the request of Juror, Robert Byrne, and questioned by the said juror, only. there being no objection, by neither state nor defense). In connection with the testimony of Det. Wm. Stevens, the state introduced and the court ordered filed in evidence, a wrist watch, S-19, and a blue checked shirt, S-21. To which aforementioned introductions, counsel for the defendant, objected and Reserved bills of exception. In further connection with the testimony of [fol. 27] the said Det. Stevens, the defense motioned for a Mistrial, which said motion was Denied by the court, to which ruling of the court counsel for the defendant, objected and reserved a bill of exceptions. In connection with the testimony of Capt. Dowie, the state introduced and the court ordered filed in evidence, a black purse, S-20. In connection with the testimony of Det. Hyde, the state introduced and the court ordered filed in evidence, 4 keys and key ring, S-22. To which aforementioned introductions (S-20 and S-22) counsel for the defendant objected and reserved bills of exception. The State Rests. The court then recessed for Supper, 4:00 P. M. to 7:00 P. M. Upon returning from supper at the hour of 7:00 P. M. the court administered the oath of acting court reporter to Mr. George S. Thomas, the said Mr. Thomas then acted in the official capacity for which he was sworn this date, substituting for the regular Court Stenographer, Mr. Chester G. Mathis, for the rest of the evening session of the Court. Both sides being ready, and on motion of the defense, Dr. C. S. Holbrook, Mrs. S. K. Rose, Frank Valentinian and Freddie Eubanks, were duly sworn by the clerk, testified on the part of the defense and were cross-examined on behalf of the State. In connection with the testimony of Dr. Holbrook, the defense introduced and the court ordered filed in evidence, a report of Dr. Holbrook, addressed to Judge Hertz, dated 1 June, 1955, D-3. A written report of and signed by Doctors Chetta, Holbrook and Posey, Dated May 10, 1955, D-4. At this point the hour being 10:50 P. M. the court ordered a recess in this matter until to-morrow (June 30, 1955) at 10:00 A. M. The court instructed the jury as to the law, and ordered the jury retired for the night in the custody of the Criminal Sheriff. The court then ordered the defendant remanded to said time and date.

June 30, 1955

[fol. 28] The defendant accompanied by his counsel H. Garon Esq., and Jos. Gowan Esq., was placed at the bar of the court. Mr. Hubert and Mr. Duplantier, being present representing the State. Trial of this case recessed from yesterday (June 29, 1955) at 10:50 P. M. until this date at 10:00 A. M. The jury was then placed in the jury box and all found to be present, as follows: Desmond Boudreaux, Stanley Brettel, Chas. Brown, Whitney Buras, Robert Byrne, Jr., Thorn Himel, James Kent, Gerard Maerke, Gerard McGinn, Harold Newman, Edward Patterson and Robert Reichert. The State and the defense announced, their readiness to resume the trial of this case. On motion of the defense the court ordered that an instanter subpoena be issued for, Fred Scott, 1630 Caliope St., The clerk issued the instanter, per order of the court. On motion of the defense, Chas. Linkinhiel, Fred Scott (who appeared as a result of the instanter, issued), Frank Valentinian and Mrs. Catherine Berkley, were duly sworn by the clerk, testified on the part of the defense and were cross-examined on behalf of the State. In connection with the testimony of Chas. Linkinhiel, the state and defense, jointly introduced and the court ordered filed in evidence, a payroll record of Gluck's Restaurant, S-23. In connection with the testimony of Mrs. Catherine Barkley, the defense introduced and the court ordered filed in evidence the following: Employee's withholding certificate of Robert Taylor, D-6, Check out slip of Robert Taylor, D-7, Punch Card of Freddie Eubanks, D-8. Punch card of Robert Taylor, D-9, another, punch card of Robert Taylor, D-10. Employee's withholding certificate of Freddie Eubanks, D-11. The Defense Rests. (the State in rebuttal) On motion of the State, Dr. N. Chetta and Dr. H. T. Posey were duly sworn by the clerk, testified on the part of the state and were cross-examined on behalf of the defense. The State Rests. Counsel for the defendant filed [fol. 29] with the court eleven (11) special charges. Mr. Duplantier made the state's opening argument. Mr. H. Garon argued on behalf of the defendant. Mr. Hubert then made the state's closing argument. The court DENIED all eleven (11) special charges previously filed by the defense (see record) To which ruling of the court counsel for the defendant objected and reserved bills of exception. The

court delivered its charge to the jury at the hour of 8:30 P. M. and at the close of said charge the court presented to the jury a written list of the Responsive Verdicts. The jury retired to deliberate at the hour of 9:15 P. M. and returned into open court at the hour of 12:40 A. M. (July 1, 1955) with the following written verdict: "July 1, 1955, Guilty as charged." (signed) Robert S. Reichert, Foreman." On motion of the defense the court ordered that the jury be polled. The clerk then polled the jury, and the verdict found to be unanimous and legal. The court then ordered the verdict of the jury recorded and filed, and the defendant remanded to await sentence. The court then discharged the petty jury in this case and presented to each juror a certificate of Service for the month of June, 1955.

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

MINUTE ENTRY RE WITHDRAWAL OF COUNSEL—July 5, 1955

On written motion of Jos. A. Gowan, Esq., the court permitted said counsel to withdraw at attorney for the defendant, and further ordered said counsel's name stricken from the record, as attorney for the defendant.

[fol. 30] IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

MINUTE ENTRY RE MOTION FOR NEW TRIAL, MOTION IN ARREST OF JUDGMENT AND BILL OF EXCEPTIONS—February 24, 1956

The defendant accompanied by his counsel H. Garon Esq., was placed at the bar of the court. Counsel for the defendant herewith filed with the court a motion for a new trial. Said motion for a new trial being submitted by the defense and denied by the court, to which ruling of the court counsel for the defendant objected and reserved a bill of exceptions. Counsel for the defendant then filed with the court a motion in arrest of judgment, which said motion was submitted by the defense and Denied by the

court, to which ruling of the court counsel for the defendant objected and reserved a bill of exceptions.

Counsel for the defendant, then filed with the court 32 formal bills of exception. (including bills of exception to the court's ruling on the motion for a New Trial and motion in arrest of judgment).

The court then informed the defense that the court would like time to consider and study the bills of exception so filed, and would not sign bills of exception, until a later date, to be set by the court.

The court then ordered the defendant remanded to await further legal proceedings.

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

MINUTE ENTRY RE SENTENCE AND MOTION FOR A SUSPENSIVE APPEAL—May 2, 1956

The defendant accompanied by his counsel H. Garon Esq., was placed at the bar of the court for sentence. The Court signed the defendant's bills of exception on May 1st, 1956. The Court signed its per curiams to said bills of exception, on May 1st, 1956, and ordered same filed this day. The defendant then being ready for sentence, the court sentenced the defendant as follows:

[fol. 31] It is hereby ordered and it is the sentence of this court, that you Freddie Eubanks, be remanded to the parish prison of the Parish of Orleans, there to remain in the custody of the Criminal Sheriff of the Parish of Orleans, until your execution on such day and such hour and place as may be designated in his warrant by the Governor of the State of Louisiana; and your execution be caused by the passing through your body a current of electricity of sufficient intensity to cause death, and by the application and continuance of such current through your body until you are dead, as prescribed by Act 14, of the Regular session of the Legislature of the State of Louisiana, for the year 1940.

Pronounced in open court in the presence of the accused, his counsel, and the District Attorney of the parish of Orleans, on this 2nd day of May, 1956, at 10:30 o'clock A. M.

(Signed) Niels F. Hertz, Judge.

H. Garon Esq., counsel for the defendant herein, then filed with the court a Motion for a Suspensive Appeal, the court granted and signed the motion for a Suspensive appeal, with date returnable being June 28, 1956. Pending the suspensive appeal, the defendant was then remanded without the benefit of bail.

[fol. 32] [File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

MOTION TO QUASH—Filed August 22, 1954

(Denied Jan. 12, 1955)

Now into this Honorable Court comes Freddie Eubanks, defendant herein, through his attorneys, Herbert J. Garon and Joseph A. Gowan, said defendant Freddie Eubanks having been indicted in the above numbered and entitled cause for the crime of murder and having leave of this Court to file pleadings herein, and protesting that he is not guilty of the offense set out in the said indictment moves to quash the said indictment in its entirety, and to quash and set aside the general venire involved herein and to quash and set aside the Grand Jury Panel herein for the reason that in the proceedings prior to and attending the presentment of said indictment, mover was deprived of due process of law and equal protection of law as guaranteed by the Constitution of the United States and by the Constitution of the State of Louisiana, as follows:

1. Defendant is a member of the colored or negro race.

2. Considering the negro population of the Parish of Orleans and the number of negroes qualified for jury service, there has been systematic, unlawful and unconstitutional exclusion of negroes from the general venire and Grand Jury Panel and Grand Jury involved in the returning of the indictment herein; that said systematic, unlawful and unconstitutional exclusion of negroes from said bodies has existed continuously prior hereto for a number of years in the Parish of Orleans; that said exclusion has existed because of wish to exclude members of the colored or negro race from serving as members of the said

bodies; that a negro has never served on a Grand Jury in [fol. 33] the Parish of Orleans; that in those instances in which negroes have been included in the general venire Grand Jury Panels referred to herein, said negroes have been discriminated against by an arbitrary and inapportionate limiting of their number by State Officials who have purposely excluded negroes from serving on the said bodies and groups, all to the prejudice of substantial legal rights of your defendant.

Wherefore, the said Freddie Eubanks through his said attorneys prays that this Motion to Quash be maintained and that the said Indictment, general venire and Grand Jury Panel be declared null and void and that he be discharged from said invalid Indictment.

(Signed) Herbert J. Garon, 531 Nat'l Bank of Comm. Bldg. (Signed) Joseph A. Gowan, 230 Balter Bldg., Attorneys for Defendant.

Duly sworn to by Joseph A. Gowan. Jurat omitted in Printing.

ORDER

Let the district attorney for the Parish of Orleans show cause on September 8, 1954, why the motion to quash should not be sustained.

August 25, 1954.

(Signed) Niels F. Hertz, Judge.

January 12, 1955.

The motion to Quash is denied.

(Signed) Niels F. Hertz, Judge.

[fol. 34] [File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

SUPPLEMENTAL MOTION TO QUASH—Filed January 7, 1955
(Denied Jan. 12, 1955)

Now into this Honorable Court comes Freddie Eubanks, defendant herein, through his attorneys Herbert J. Garon and Joseph A. Gowan, and protesting that he is not guilty of the offense set out in his indictment and supplementing his Motion to Quash previously filed herein after evidence has been presented on the said Motion to Quash says, as follows:

1

That the defendant is a member of the colored or negro race.

2

That defendant has been indicted for the murder of a white woman.

3

That the negro population for the Parish of Orleans has been shown to be substantial, approximating 30% or greater than 30% of the total population, since 1950.

4

That the number of negro registered voters in the Parish of Orleans has been substantial and in recent years the number of negro registered voters compared with white registered voters has not been substantially disproportionate with the population percentage of negroes to whites; that admittedly negroes must be literate, read and write the English language to be registered voters.

5

That in 1953 and 1954 in the City of New Orleans there were fifty-one (51) white grade schools as compared with thirty-two (32) negro grade schools; 26,900 white enrolled [fol. 35] and 26,129 negroes enrolled; 860 white teachers, 677 negro teachers; that for the same years there were eighteen (18) white secondary schools compared with nine

(9) negro secondary schools; 12,422 white enrolled therein and 7,243 negroes enrolled therein; 550 white teachers and 301 negro teachers; that Xavier University and Dillard University are both negro colleges with greater than 1,000 negro enrollment; that there are negro Professors at both Xavier and Dillard Universities; that some negroes attended Loyola University.

6

That there are qualified negro citizens in the City of New Orleans who have not served on Grand Juries in this Parish; that at least two negroes each year for the last several years have served on the Federal Grand Jury for the Eastern District Court, New Orleans Division.

7

That since 1936 qualified negroes have been placed in the Jury wheel by the Commissioners and that since 1936 negroes have appeared on the venire of seventy-five (75) prospective jurors which venire is submitted to each of the Judges for the purpose of ultimately selecting the Grand Jury of twelve (12).

8

That no living Judge of the Criminal District Court for the Parish of Orleans has ever selected a negro to serve on the Grand Jury and that the Judges have been serving for the following number of years:

Judge Frank T. Echezabal since 1921.
Judge Wm. O'Hara since 1932.
Judge Geo. Platt since 1936.
Judge Fred Oser since 1936.
Judge Bernard Cocke since 1944.

9

That no negro in the memory of the said Judges, in the memory of all living District Attorneys for the Parish of Orleans, and in the memory of the Clerk of the Criminal District Court for the Parish of Orleans has ever served on any Grand Jury in the Parish of Orleans, with one exception, and that that negro was chosen by Judge Charbonnet to serve on his Grand Jury without the knowledge of the

Judge that he was of the negro race; that he appeared to be Caucasian and was mistaken for a white man when selected.

[fol. 36] 10

That only one of the Judges interviews all of the available prospective jurors on his venire; that of the remaining Judges, all except one, generally send letters to a portion of the seventy-five (75) to be interviewed for the Grand Jury service, and that Judge Echezabal who selected the Grand Jury that indicted the defendant makes an investigation beforehand of the qualifications of the prospective Grand Jurors and generally selects his Grand Jury without interviews; that some of the Judges have never interviewed a negro for Grand Jury service.

11

That Judge Echezabal selected the Grand Jury that indicted this defendant without interviewing any members of his venire and that he does not know and did not know at the time of the selection whether there were or were not, negroes on his venire; that his Grand Jury consisted of twelve (12) white men and that his minutes on the day he selected the Grand Jury reflect no light on his manner of selection of the Grand Jury, but that he was submitted a list from the Jury Commissioner which contained the names of the seventy-five (75) men, their previous Jury service, their address, the name of their business, and the nature of their employment or position and address of said business; that Judge Echezabal is familiar with the neighborhoods on the City of New Orleans, having lived here for all of his 77 years.

12

That there were in fact six qualified negroes among the seventy-five (75) names submitted to Judge Echezabal for the Grand Jury that indicted the defendant and that these six negroes were not given an opportunity to serve on his Grand Jury.

13

That the conclusion is undeniable; that there has been systematic unlawful and unconstitutional exclusion of

negroes from the Grand Jury in the Parish of Orleans for at least thirty-four (34) years solely and only because of their race and color, and that the systematic unlawful, intentional and unconstitutional exclusion has extended to the present date and includes the Grand Jury which indicted the defendant herein; all contrary to the Constitution of Louisiana and the 14th Amendment to the Constitution of [fol. 37] the United States.

Wherefore, the said Freddie Eubanks through his said attorneys prays that this Motion to Quash be maintained and that the said indictment, general venire and Grand Jury Panel be declared null and void and that he be discharged from said invalid indictment.

(Signed) Herbert J. Garon, 431 Nat'l. Bank of Comm. Bldg. (Signed) Joseph A. Gowan, by HJG Balter Building. Attorneys for Defendant.

Duly Sworn to by Herbert J. Gowan. Jurat omitted in printing.

January 12, 1955.

The supplemental motion to Quash is denied.

(Signed) Niels F. Hertz, Judge.

[fol. 38] [File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

BILL OF EXCEPTION No. 1—Filed February 24, 1956

(Motion to Quash and Supplemental Motion to Quash)

[fol. 39] Be it remembered that before the trial of the above numbered and entitled cause, the defendant, by his counsel on August 25, 1954, did file a Motion to Quash the Indictment, which Motion reads as follows:

Now into this Honorable Court comes Freddie Eubanks, defendant herein, through his attorneys, Herbert J. Garon and Joseph A. Gowan, said defendant Freddie Eubanks

having been indicted in the above numbered and entitled cause for the crime of murder and having leave of this Court to file pleadings herein, and protesting that he is not guilty of the offense set out in the said indictment moves to quash the said indictment in its entirety, and to quash and set aside the general venire involved herein and to quash and set aside the Grand Jury Panel herein for the reason that in the proceedings prior to and attending the presentment of said indictment, mover was deprived of due process of law and equal protection of law as guaranteed by the Constitution of the United States and by the Constitution of the State of Louisiana, as follows:

1. Defendant is a member of the colored or negro race.

2. Considering the negro population of the Parish of Orleans and the number of negroes qualified for jury service, there has been systematic, unlawful and unconstitutional exclusion of negroes from the general venire and Grand Jury Panel and Grand Jury involved in the returning of the indictment herein; that said systematic, unlawful and unconstitutional exclusion of negroes from said bodies has existed continuously prior thereto for a number of years in the Parish of Orleans; that said exclusion has existed because of wish to exclude members of the colored or negro race from serving as members of said bodies; that a negro has never served on a Grand Jury in the Parish of Orleans; that in those instances in which negroes have [fol. 40] been included in the general venire Grand Jury Panels, referred to herein, said negroes have been discriminated against by an arbitrary and inapportionate limiting of their number by State officials who have purposely excluded negroes from serving on the said bodies and groups, all to the prejudice of substantial legal rights of your defendant.

Wherefore, the said Freddie Eubanks through his said attorneys prays that this Motion to Quash be maintained and that the said Indictment, general venire and Grand Jury Panel be declared null and void and that he be discharged from said invalid indictment.

Be it further remembered that before trial, the defendant, by his counsel, on January 7, 1955, did file a Supple-

mental Motion to Quash the Indictment, which Motion reads as follows:

Now into this Honorable Court comes Freddie Eubanks, defendant herein, through his attorneys, Herbert J. Garon and Joseph A. Gowan, and protesting that he is not guilty of the offense set out in his indictment and supplementing his Motion to Quash previously filed herein after evidence has been presented on the said Motion to Quash, says, as follows:

1

That the defendant is a member of the colored or negro race.

2

That defendant has been indicted for the murder of a white woman.

3

That the negro population for the Parish of Orleans has been shown to be substantial, approximately 30% or greater than 30% of the total population, since 1950.

4

That the number of negro registered voters in the Parish of Orleans has been substantial and in recent years the number of negro registered voters compared with white registered voters has not been substantially disproportionate with the population percentage of negroes to whites; that admittedly negroes must be literate, read and write [fol. 41] the English language to be registered voters.

5

That in 1953 and 1954 in the City of New Orleans there were fifty-one (51) white grade schools as compared with thirty-two (32) negro grade schools; 26,900 white enrolled and 26,129 negroes enrolled; 860 white teachers, 677 negro teachers; that for the same years there were eighteen (18) white secondary schools compared with nine (9) negro secondary schools; 12,422 white enrolled therein and 7,243 negroes enrolled therein; 550 white teachers and 301 negro teachers; that Xavier University and Dillard University

are both negro colleges with greater than 1,000 negro enrollment; that there are negro professors at both Xavier and Dillard Universities; that some negroes attend Loyola University.

6

That there are qualified negro citizens in the City of New Orleans who have not served on Grand Juries in this Parish; that at least two negroes each year for the last several years have served on the Federal Grand Jury for the Eastern District Court, New Orleans Division.

7

That since 1936 qualified negroes have been placed in the Jury wheel by the Commissioners, and that since 1936 negroes have appeared on the venire of seventy-five (75) prospective jurors, which venire is submitted to each of the Judges for the purpose of ultimately selecting the Grand Jury of twelve (12).

8

That no living Judge of the Criminal District Court for the Parish of Orleans has ever selected a negro to serve on the Grand Jury and that the Judges have been serving for the following number of years:

[fol. 42] Judge Frank Echezabal since 1921.
Judge Wm. O'Hara since 1932.
Judge George Platt since 1936.
Judge Fred Oser since 1936.
Judge J. Bernard Cocke since 1944.

9

That no negro in the memory of the said Judges, in the memory of all living District Attorneys for the Parish of Orleans, and in the memory of the Clerk of Criminal District Court for the Parish of Orleans has ever served on any Grand Jury in the Parish of Orleans, with one exception, and that that negro was chosen by Judge Charbonnet to serve on his Grand Jury without the knowledge of the Judge that he was of the negro race; that he appeared to be Caucasian and was mistaken for a white man when selected.

10

That only one of the Judges interviews all of the available prospective Jurors on his venire; that of the remaining Judges, all except one, generally send letters to a portion of the seventy-five (75) to be interviewed for the Grand Jury service, and that Judge Echezabal, who selected the Grand Jury that indicted the defendant makes an investigation beforehand of the qualifications of the prospective Grand Jurors and generally selects his Grand Jury without interviews; that some of the Judges have never interviewed a negro for Grand Jury service.

11

That Judge Echezabal selected the Grand Jury that indicted this defendant without interviewing any members of his venire and that he does not know and did not know at the time of the selection whether there were or were not negroes on his venire; that his Grand Jury consisted of twelve (12) white men and that his minutes on the day he selected the Grand Jury reflect no light on his manner of selection of the Grand Jury, but that he was submitted a list from the Jury Commissioner which contained the names of the seventy-five (75) men, their previous jury services, [fol. 43] their addresses, the name of their business, and the nature of their employment or position and address of said business; that Judge Echezabal is familiar with the neighborhoods in the City of New Orleans, having lived here for all of his 77 years.

12

That there were in fact six qualified negroes among the seventy-five (75) names submitted to Judge Echezabal for the Grand Jury that indicted the defendant and that these six negroes were not given an opportunity to serve on his Grand Jury.

13

That the conclusion is undeniable; that there has been systematic unlawful and unconstitutional exclusion of negroes from the Grand Jury in the Parish of Orleans for at least thirty-four (34) years solely and only because of their race and color, and that the systematic unlawful,

intentional and unconstitutional exclusion has extended to the present date and included the Grand Jury which indicted the defendant herein; all contrary to the Constitution of Louisiana and the 14th Amendment to the Constitution of the United States.

Wherefore, the said Freddie Eubanks through his said attorneys, prays that this Motion to Quash be maintained and that the said Indictment, general venire and Grand Jury Panel be declared null and void and that he be discharged from said invalid indictment.

And Whereupon, the Court having overruled the defendant's Motion to Quash and Supplemental Motion to Quash the Indictment, your defendant, by his counsel, did then and there in open Court reserve this bill of exception, making part thereof the Motion to Quash, the Supplemental Motion to Quash, all testimony of witnesses called pursuant to said Motions, all exhibits and documents filed pursuant thereto, the minutes of Honorable Frank Echezabal, Judge of Section "D" of the Criminal District Court for March 1, 1954, the entire record, including reasons for judgment in State of Louisiana versus Alfred Dowles, [fol. 44] No. 139-324 of the Docket of the Criminal District Court for the Parish of Orleans, the Grand Jury Book in possession of the Jury Commissioner for the Parish of Orleans containing the names of the Panel of seventy-five (75) from which the Grand Jury which indicted the defendant was selected, all of the stipulations of testimony entered into between the District Attorney and/or the Assistant District Attorney and the defendant through his counsel, and all stenographic notes of evidence, the ruling and decision of the Court and the reasons given for same, as well as the Indictment and all endorsements thereon. And there being error to the prejudice of the defendant, your defendant, Freddie Eubanks, through his counsel aforesaid, files this, his formal bill of exception, and tenders the same to the Court pursuant to the Statute in such case made and provided, which is done accordingly this 1st day of May, 1956.

(Signed) Niels F. Hertz, Judge.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

PER CURIAM TO BILL OF EXCEPTION NO. 1—Filed May 2, 1956

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

May it please the court:

I overruled the motion to quash and the supplemental motion to quash the indictment because the grand jury that returned the indictment was legally selected and impanelled under the provisions of our law, namely Revised Statute 15:196, by the Honorable Frank T. Echezabal, Judge of Section "D", Criminal District Court for the Parish of Orleans. In support of the motion to quash and the supplemental motion to quash the defendant subpoenaed Judge Echezabal who testified that he selected and appointed the grand jury that returned the indictment in this case from a grand jury panel consisting of seventy-five (75) names submitted by the jury commissioners for the parish of Orleans [fol. 45] and in doing so selected the most competent and best qualified persons. The fact that a member of the negro race was not selected by Judge Echezabal was not an abuse of discretion but a right given him under the law, particularly Revised Statute 15:196, which says in part:

> "The jury commissioners shall draw from the said wheel the names of not less than seventy-five persons, * * * "Which shall be submitted by said commissioners to the presiding judge of that section of the Criminal District Court whose turn it shall happen then to be to impanel the incoming grand jury; the said judge, from the names thus submitted shall select twelve persons who shall constitute the grand jury for the parish of Orleans for the grand jury term next ensuing, * * *"

This question has been passed upon before by your Honors in the case of State vs. Dorsey, reported in 207 La. 928; 22 So. 2d. 273, which said authority completely sustains my action in the instant case.

Respectfully submitted, (Signed) Niels F. Hertz, Judge.

New Orleans, Louisiana, May 1st, 1956.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

BILL OF EXCEPTION NO. 2—Filed February 24, 1956

[Objection to Testimony of Clerk, U. S. District Court]

Be it remembered that prior to trial and during the hearing on the Motion to Quash the Indictment on the 4th day of January, 1956, while a witness called by the defendant, Honorable A. Dallam O'Brien, Jr., Clerk, United States District Court, was testifying on direct examination, the following question was asked by defendant's counsel, and [fol. 46] objected to by the State:

> "Would you tell us, Mr. O'Brien, briefly, without leaving out the details, the modus operandi of your office or your procedure in the gathering of names for the Federal Grand Jury during your period in office?"

And whereupon the Court having sustained the objection referred to in the foregoing testimony, your defendant, through his counsel, did reserve this bill of exception, making a part thereof the question propounded, the objection by the Assistant District Attorney, the ruling, the reasons, if any, for the ruling, and the indictment.

And there being error to the prejudice of the defendant, your defendant, Freddie Eubanks, through his counsel aforesaid, files this, his formal bill of exception, and tenders the same to the Court pursuant to the Statute in such case made and provided, which is done accordingly this 1st day of May 1956.

(Signed) Niels F. Hertz, Judge.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

PER CURIAM TO BILL OF EXCEPTION NO. 2—Filed May 2, 1956

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

May it please the Court:

I believe my ruling on the question involved in Bill of Exception Number 2 is the only one I could have made under

the circumstances. The defendant was charged with violating the laws of the State of Louisiana and not the laws of the United States. The legal procedures to be followed in this case are set out under the laws of the State of Louisiana and any reference to any proceeding of the federal government would not be controlling.

Respectfully submitted, (Signed) Niels F. Hertz, Judge.

New Orleans, Louisiana, May 1st, 1956.

[fol. 47] [File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

No. 146-235 Section "F"

BILL OF EXCEPTION No. 3—Filed February 24, 1956

(Objection to Testimony of Clerk, U. S. District Court)

Be it remembered that prior to trial and during the hearing on the Motion to Quash the Indictment on the 4th day of January, 1955, while a witness called by the defendant, Honorable A. Dallam O'Brien, Jr., Clerk United States District Court, was testifying on direct examination, the following question was asked by defendant's counsel, and objected to by the State:

> "Mr. O'Brien, to your knowledge has there ever been a negro or negroes serve in a Federal Grand Jury during your tenure of office?"

And whereupon the Court having sustained the objection referred to in the foregoing testimony, your defendant, through his counsel, did reserve this bill of exception, and requested that Mr. O'Brien's testimony be perpetuated to be a part of this bill, which the Court thereupon granted.

And there being error to the prejudice of the defendant, your defendant, Freddie Eubanks, through his counsel aforesaid, files this, his formal bill of exception, and tenders the same to the Court, pursuant to the Statute in such case

made and provided, which is done accordingly this 1st day of May 1956.

(Signed) Niels F. Hertz, Judge.

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

[fol. 48] PER CURIAM TO BILL OF EXCEPTION NO. 3—Filed May 2, 1952

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

May it please the Court:

I submit the same reasons for my ruling on the question involved in Bill of Exception Number 3 as given in my per curiam to Bill of Exception Number 2.

Respectfully submitted, (Signed) Niels F. Hertz, Judge.

New Orleans, Louisiana, 1 May 1956.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

BILL OF EXCEPTION NO. 4—Filed February 24, 1956

(Objection to Testimony of Judge O'Hara)

Be it remembered that prior to trial and during the hearing on the Motion to Quash the Indictment on the 4th day of January, 1955, while Honorable William J. O'Hara, Judge of the Criminal District Court for the Parish of Orleans, was testifying as a witness called by defendant, the following question was propounded to him by defendant's counsel, and objected to by the State.

"Do you feel, (it is assumed by your answer to the last question), but I would like to ask you whether you feel the selection of the Grand Jury since 1932 and up to the last Grand Jury was an improper method?"

And whereupon the Court having sustained the objection referred to in the foregoing testimony, your defendant, through his counsel, did reserve this bill of exception, and requested that the Honorable William J. O'Hara's testimony be perpetuated to be a part of this bill, which the Court thereupon granted.

And there being error to the prejudice of the defendant, your defendant, Freddie Eubanks, through his counsel aforesaid, files this, his formal bill of exception, and tenders the same to the Court pursuant to the Statute in such case [fol. 49] made and provided, which is done accordingly this 1st day of May, 1956.

(Signed) Niels F. Hertz, Judge.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

PER CURIAM TO BILL OF EXCEPTION No. 4—Filed May 2, 1956

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

May it please the Court:

My ruling insofar as Bill of Exception Number 4 is concerned, was based on the fact that the question calls for an individual opinion outside of this particular case without any law being offered in support of said opinion, and was too general without being based upon certain facts to substantiate the question asked.

Respectfully submitted, (Signed) Niels F. Hertz, Judge.

New Orleans, Louisiana, 1 May, 1956.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

BILL OF EXCEPTION No. 5—Filed February 24, 1956

(Objection to Testimony of Judge O'Hara)

Be it remembered that prior to trial and during the hearing on the Motion to Quash the Indictment on the 4th day

of January, 1955, while Honorable William J. O'Hara, Judge of the Criminal District Court for the Parish of Orleans, was testifying as a witness called by the defendant, the following question was propounded to him by defendant's counsel, and objected to by the State:

> [fol. 50] "Answer my last question if you will, Judge O'Hara. Did you prepare a judgment in the case of State of Louisiana versus Alfred Dowels which forms part of that record, which is on the same type Motion to Quash, number 139-324, Criminal District Court for the Parish of Orleans, arising out of a case in Section (A)?"

And whereupon the Court having sustained the objection referred to in the foregoing testimony, your defendant, through his counsel did reserve this bill of exception, including as a part thereof the record in case number 139-324 "A" of the docket of the Criminal District Court entitled "State of Louisiana versus Alfred Dowels" and defendant's counsel requested that Judge O'Hara's testimony be perpetuated to be a part of this bill, which the Court thereupon granted; defendant's counsel further offered to file in evidence the entire record No. 139-324 "A", including the reasons for Judgment on the Motion to Quash the Indictment, which offer was not allowed, and to which ruling a second bill of exception was reserved which forms a part of the same bill of exception.

And there being error to the prejudice of the defendant, your defendant, Freddie Eubanks, through his counsel aforesaid, files this, his formal bill of exception, and tenders the same to the Court pursuant to the Statute in such case made and provided, which is done accordingly this 1st day of May 1956.

(Signed) Niels F. Hertz, Judge.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS.

PER CURIAM TO BILL OF EXCEPTION No. 5—Filed May 2, 1956

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

May it please the Court:

I give as my reasons for my ruling as to Bill of Exception Number 5 the same as contained in my per curiam to Bill of Exception Number 4.

Respectfully submitted, (Signed) Niels F. Hertz, Judge.

New Orleans, Louisiana, May 1st, 1956.

[fol. 51] [File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

MOTION FOR A NEW TRIAL—Filed February 24, 1956

(Denied Feb. 24, 1956)

Now into this Honorable Court comes Freddie Eubanks, defendant herein, through undersigned counsel, and moves the Court that the verdict of the Jury herein be set aside and a new trial ordered herein, for the following reasons, to-wit:

1

That the verdict herein is contrary to the law and the evidence.

2

That the bills of exception reserved during the proceedings show error committed to the prejudice of the accused.

[fol. 52] 3

That the ends of justice would be served by the granting of a new trial herein.

4

That the Motion to Quash and the Supplemental Motion to Quash should have been sustained for the reason that the United States Supreme Court has in a long line of recent decisions declared as unconstitutional Grand Juries which have systematically excluded negroes from service thereon; that Freddie Eubanks, the defendant herein, was indicted by an all white Grand Jury selected under the system prevailing which was a system legally designed to exclude members of the negro race from service on its Grand Juries, evidenced by the fact that no known negro has ever served on any Orleans Parish Grand Jury.

5

That the Court erred in admitting into evidence the gruesome inelegant and prejudicial picture of the deceased victim which had the effect of inciting the Jury and prejudicing them into returning a verdict against the defendant.

6

That in view of the plea of not guilty by reason of insanity, the complete picture of the defendant's mental condition was not allowed to go to the jury in view of the Court prohibiting the defense counsel from questioning lay witnesses as to the mental conduct and attitude of the defendant as they observed him in his daily acts.

7

That without requiring the State to lay the proper foundation for the introduction of photographs in which the defendant was depicted as pointing out certain evidence in the case and which photographs constituted confessions or inculpatory evidence against the defendant, the Court erroneously permitted the said photographs to be admitted into evidence.

8

That the jury was prejudiced into finding a guilty verdict against the defendant after hearing a remark by the State's witness, Detective William Stevens, which remark was not responsive to the question asked of him, and which remark was a deliberate falsehood and was designed by Detective

William Stevens to prejudice the Jury into believing that [fol. 53] defense counsel had indicated that Freddie Eubanks was an accomplice of Robert Taylor in the murder of the victim; that the Court, in instructing the Jury to disregard this prejudicial remark could not have possibly erased the impression that had already been implanted in their minds and which could not thereafter be cured.

9

That serious and prejudicial error was committed when the following inadmissible evidence was allowed to come into the record and be displayed to the Jury: The proces verbal of death which contained hearsay evidence; the keys to the death room which were never connected with the defendant; the pipe containing blood that was never connected with the defendant; and the shirt that contained blood not identified nor connected with the defendant.

10

That the Court, in inadvertently commenting on the evidence when Detective William Stevens was on the stand under oath, had the effect of influencing the Jury into disbelieving the defendant's theory of the case, which was that Robert Taylor, alias Gloria Lopez, Alias Gay Boy, was the murderer, who suddenly departed from the City of New Orleans shortly after the body of the victim was discovered; that the Court erred in not permitting the State's witness, Valentinian, to testify regarding said Robert Taylor's departure.

11

That the defendant was prej. liced when the Court permitted the State to propound a certain hypothetical question not based on fact, and when the Court failed to allow Dr. C. S. Holbrook to answer defendant's hypothetical question which was based on fact; and that while Captain Charles Kincaid was qualified as an expert in the field of finger prints he was never qualified in the field of blood analysis, and notwithstanding, was permitted to testify that a substance appearing on the wash basin in the death room was in fact blood which he had never bothered to scientifically analyze.

12

That the Court permitted into evidence an alleged confession of Freddie Eubanks after hearing testimony to the effect that Freddie Eubanks was subjected to examination by four police officers behind closed doors for many hours [fol. 54] alone and without counsel; and that he was not at first cooperative according to the testimony of the police yet became cooperative several hours later; and that the officers' testimony under analysis discloses many vital inconsistencies, and their testimony therefore is unworthy of belief; and that Captain William Dowie, Chief officer of the Homicide Squad testified that he was not sure whether Freddie Eubanks was influenced or not by the conduct of the said officers.

13

That in refusing to charge the Jury with the special instructions, numbers 1 through 4 and 6 through 11 timely filed, which instructions were applicable to the issues involved in the case, and which instructions were legally drawn and composed, the Court committed serious error to the prejudice of the defendant.

14

That by virtue of the illegal selection of the Grand Jury, Mover, Freddie Eubanks, defendant herein, was deprived of due process of law and equal protection of law as guaranteed by the Constitution of the United States and by the Constitution of the State of Louisiana, and that this and the foregoing errors complained of have resulted in a miscarriage of justice, it prejudicial to the substantial rights of the accused, and constitutes a substantial violation of his constitutional and statutory rights.

Wherefore the defendant prays that, after due proceedings had, the verdict of the Jury herein be set aside and a new trial granted herein, and for all general and equitable relief.

(Signed) Herbert J. Garon, 531 Nat'l Bank of Comm. Bldg., Attorney for the Defendant.

AFFIDAVIT

STATE OF LOUISIANA,
Parish of Orleans:

Freddie Eubanks, defendant and Mover in the foregoing Motion for a New Trial, being duly sworn, deposes and says, that his attorney, Herbert J. Garon, has read the foregoing application to him, and has explained its meaning to him, and that the facts and allegations as much as he understands and can attain, are true and correct, and those facts not known to him are alleged in good faith and on [fol. 55] his belief that they are true and correct.

Freddie Eubanks made his mark X

Sworn to and subscribed before me this 24th day of February 1956.

(Signed) Herbert J. Garon, Notary Public.

February 24, 1956.

Denied.

(Signed) Niels F. Hertz, Judge.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

MOTION IN ARREST OF JUDGMENT—Filed February 24, 1956

And now, after verdict against the said Freddie Eubanks, and before sentence, comes the said Freddie Eubanks, defendant herein, through undersigned counsel, and Moves the Court here to Arrest Judgment herein, and not to pronounce the same because of manifest errors in the record appearing, to-wit:

1

That the entire proceedings against the defendant are null and void for the fact that the defendant was never properly indicted by a Grand Jury constitutionally drawn, in that the Grand Jury which indicted Freddie Eubanks was selected under an historically prejudicial policy in the Parish of Orleans to systematically exclude negroes from

their constitutionally guaranteed right to serve on the Grand Juries of the Parish of Orleans; that because of this manifest error the indictment is void and of no effect and that all of the proceedings therefore, from the calling of the first petit juror to the verdict herein are null, void and of no effect.

That by virtue of the illegal selection of the Grand Jury, as aforesaid, Mover, Freddie Eubanks, defendant herein, was deprived of due process of law and equal protection of [fol. 56] law as guaranteed by the Constitution of the United States and by the Constitution of the State of Louisiana, and that this error duly complained of has resulted in a miscarriage of justice, is prejudicial to the substantial rights of the accused, and constitute a substantial violation of his constitutional rights.

That the defendant makes a part of this, his Motion in Arrest of Judgment, the bills of exception filed herein, numbers 1 through 6, The Motion to Quash the indictment, the Supplemental Motion to Quash the indictment, all testimony of witnesses called pursuant to said Motions, all Exhibits and Documents filed pursuant thereto, the minutes of Honorable Frank Echezabal, Judge of Section "D" of the Criminal District Court for March 1, 1954, the entire record, including reasons for judgment in "State of Louisiana versus Alfred Dowels," No. 139-324 of the Docket of the Criminal District Court for the Parish of Orleans, the Grand Jury Book in possession of the Jury Commissioners for the Parish of Orleans, containing the names of the Panel of seventy-five from which the Grand Jury which indicted the defendant was selected, all of the stipulations of testimony entered into between the District Attorney or Assistant District Attorney and the defendant, through his counsel, and all stenographic notes of evidence, the ruling and decision of the Court, and the reasons given for same, as well as the indictment and all endorsements thereon.

2

That before sentence and after the overruling of the Motion for a new Trial herein, your defendant, Freddie Eubanks, presented to the Court in addition to the foregoing six bills of Exception, certain other bills numbered 7

through 31, which were duly filed by the Court and which are annexed and made a part hereof as though written in extenso.

Your defendant avers that because of the errors patent on the face of the record as hereinabove recited and contained in the said thirty-one Bills of Exception, that there has been a miscarriage of justice prejudicial to the substantial rights of the accused, which constitutes a substantial violation of his constitutional and statutory rights, and that, therefore, your defendant, Freddie Eubanks, can have no judgment rendered against him on the said record.

[fol. 57] [File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

BILL OF EXCEPTION No. 31—Filed February 24, 1956

(Motion for New Trial, etc.)

Be it remembered that after conviction, and before sentence, your defendant, Freddie Eubanks, through his counsel, did file a Motion for a New Trial, which said Motion for a New Trial is attached hereto and made part hereof.

Be it further remembered that the said Motion for a New Trial was duly heard on Friday, February 24, 1956, and that after argument had on the said Motion for a New Trial, the Court overruled the same, whereupon, the defendant, Freddie Eubanks, through his attorney, objected to the said ruling of the Court and reserved a formal bill of Exception, making a part of the said Bill of Exception the said Motion for a New Trial, the ruling of the Court thereon, and the entire evidence heard on the trial of this case, and the written charge delivered by the Court to the jury on the trial of this case.

And your defendant, Freddie Eubanks, through his counsel, having submitted this, his Bill of Exception, making a part of the same the said Motion for a New Trial, the ruling [fol. 58] of the Court, the entire evidence heard on the trial of this case, and the written charge delivered to the Jury by the Court, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this

court, pursuant to the statute in such case made and provided, which is done, accordingly, this 1st day of May, 1956.

(Signed) Niels F. Hertz, Judge.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

PER CURIAM TO BILL OF EXCEPTION NO. 31—Filed May 2, 1956

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

May it please the Court:

The motion for a new trial presented nothing new and therefore I overruled it.

Respectfully submitted, (Signed) Niels F. Hertz, Judge.

New Orleans, Louisiana, May 1st, 1956.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

BILL OF EXCEPTION NO. 32—Filed February 24, 1956

(Motion in Arrest of Judgment)

Be it remembered that before sentence was pronounced herein, and after conviction, your defendant, Freddie Eubanks, through his counsel, did file a Motion in Arrest of Judgment, which said Motion in Arrest of Judgment is attached hereto and made a part hereof.

Be it further remembered that the said Motion in Arrest [fol. 59] of Judgment was duly heard on Friday, February 24, 1956, and that after argument had on the said Motion in Arrest of Judgment, the Court overruled the same, and denied the same, to which ruling, the defendant, Freddie Eubanks, through his attorney, objected to the said ruling of the Court and reserved a formal bill of Exception, mak-

Q. I believe you also mentioned the age requirement of twenty-one.

[fol. 72] A. Twenty-one.

Q. Do you know from your position and experience in your position, whether the large number of registered voters as listed on this memorandum are people who are able to read and write and who are able to fill out the application card and sign their name at the bottom of the card?

By Mr. Haggerty:

I don't believe the witness is able to say which of them qualified for registration under the Act.

A. There is no way. The majority——

By the Court:

I will overrule the objection.

By Mr. Garon:

Q. In other words, your office is in the Soule Building?

A. That's right.

Q. Your office is the only source which registers voters in the City of New Orleans? In other words, to be registered as a voter in the City of New Orleans, they would have to come to your office.

A. Up until this year. We had an office at Algiers.

Q. You were present in your office in the Soule Building nearly every day?

A. Every day.

Q. Your hours are between 9:00 and 5:00?

A. 9:00 and 4:00.

Q. During that time you observed people registering as voters?

A. Yes.

Q. From your observation were a majority of those people able to fill out the application card and sign their name at the bottom of the card?

A. The majority. Very few required assistance.

Q. Isn't it a fact, the procedure is, that an individual who is appearing for the purpose of becoming a registered voter fills out his own card by himself in his own handwriting?

A. That's right.

ing a part thereof the said Motion in Arrest of Judgment, the formal bills of exception taken throughout the case, the Motion to Quash, the Supplemental Motion to Quash, all testimony of witnesses called pursuant to said motions, all exhibits and documents filed pursuant thereto, the minutes of Honorable Frank Echezabal, Judge of Section "D" of the Criminal District Court for March 1, 1954, the entire record, including reasons for judgment in "State of Louisiana versus Alfred Dowels," No. 139-324 of the Docket of the Criminal District Court for the Parish of Orleans, the Grand Jury Book in possession of the Jury Commissioner for the Parish of Orleans containing the names of the panel of seventy-five (75) from which the Grand Jury which indicted the defendant was selected, all of the stipulations of testimony entered between the district attorney and/or the Assistant District Attorney and the defendant through his counsel, all stenographic notes of evidence, the ruling and decision of the court and reasons given for same, and the Indictment and all endorsements thereon, all as fully set out in the Motion in Arrest of Judgment.

And your defendant, Freddie Eubanks, through his counsel, having submitted this, his Bill of Exception, to the Court, tenders the same herewith, and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done, accordingly, this 1st day of May 1956.

(Signed) Niels F. Hertz, Judge.

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

[fol. 60] PER CURIAM TO BILL OF EXCEPTION NO. 32
Filed May 2, 1956

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

May it please the Court:

The motion in arrest of judgment likewise presented nothing new and therefore I overruled it.

[fol. 73] By Mr. Garon:

In connection with the testimony of Mr. Dyer, the defense offers the memorandum identified by Mr. Dyer, as the official record from December 1951, to February 1954.

By the court:

Any objection.

By Mr. Haggerty:

No objection.

By the court:

Very well. Mark it D-1.

Cross-examination.

By Mr. Haggerty:

Q. Mr. Dyer, the figures gives the total registration of males and females, white and colored, irrespective of age, from twenty-one to sixty-five?

A. Yes.

Q. Those figures include females, that is women, both white and colored, over the age of twenty-one?

A. The total registration.

Q. And that also includes men and women over the age of sixty-five?

A. That's right.

Q. Those figures also include people who are impaired, that is they might be blind?

A. That's right.

Q. Those figures also include illiterates who cannot read and write, but registered under the Act by two witnesses accompanying them?

A. That's right.

Q. Mr. Dyer, of the figures you have given us, do they include all those other persons included in the sum total?

A. Yes.

By Mr. Haggerty:

No further questions.

The motion for a new trial presented nothing new and therefore I overruled it.

The evidence fully justifies the verdict of the jury and in my opinion the defendant received a fair and impartial trial and the verdict of the jury should not be disturbed.

Respectfully submitted, (Signed) Niels F. Hertz, Judge.

New Orleans, Louisiana, May, 1st, 1956.

[Title omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

SENTENCE—May 2, 1956

FREDDIE EUBANKS, the jury in your case having found you guilty of murder as charged in the indictment found against you by the grand jury of the Parish of Orleans, it is hereby ordered, and it is the sentence of the court, that you Freddie Eubanks, be remanded to the Parish prison of the parish of Orleans, there to remain in the custody of the Criminal Sheriff of the parish of Orleans, until your execution on such a day, at such hour and place as may be designated in his warrant by the governor of the State of Louisiana; and your execution be caused by the passing through your body of a current of electricity of sufficient intensity to cause death, and by the application and continuance of such current through your body until you are dead, as prescribed by Act 14 of the regular session of the Legislature of the State of Louisiana, for the year of 1940.

Pronounced in open court in the presence of the accused, his counsel, and the district attorney of the Parish of [fol. 61] Orleans, on this 2nd day of May 1956, at 10:32 A.M.

(Signed) Niels F. Hertz, Judge.

[fol. 74] ERNEST O. BECKER, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. What is your name?

A. Ernest O. Becker.

Q. Are you representing any official agency here this morning?

A. I am here representing Superintendent Redman.

Q. In other words, Mr. Redman was subpoenaed this morning, as Superintendent of Public Schools.

A. That's right.

Q. What is your position?

A. Assistant Superintendent of Public Schools.

Q. How long have you been connected with the Public School system of New Orleans?

A. Thirty-seven years.

Q. How long have you been Assistant Superintendent of Public Schools, Parish of Orleans?

A. Ten years.

Q. For the last ten years?

A. That's right.

Q. Have you with you any official records from the Public School system, and have you committed your records to New Orleans?

A. I have some records. I don't know what you want to know, but I have some information.

Q. And the information you have is from your official files of the Superintendent's office of the Public Schools?

A. That's right.

Q. I would like to know, Mr. Becker, how long it has been —how long there has been a system of compulsory education for individuals in the City of New Orleans?

A. The compulsory angle I wouldn't be able to answer offhand: I am not prepared to answer. However, there has been education for negroes as well as whites going back as far as 1864, and in the Constitution of the State of Louisiana since 1868.

[fol. 75] Insofar as the compulsory education is concerned, could you give us approximately how many years

[File endorsement omitted]

IN THE CRIMINAL DISTRICT COURT PARISH OF ORLEANS

MOTION FOR APPEAL TO SUPREME COURT OF LOUISIANA AND ORDER GRANTING SAME—May 2, 1956

And now into open court comes the defendant, Freddie Eubanks, through undersigned Counsel, and on suggesting to the Court that the record herein shows error to his prejudice and that he is desirous to appeal to the Honorable The Supreme Court of the State of Louisiana,

Wherefore, he prays that he be granted a suspensive appeal to The Honorable The Supreme Court of the State of Louisiana, returnable in accordance with law.

His (X) Mark
(Signed) Herbert J. Garon.

(Signed) Herbert J. Garon, Attorney for Defendant.

ORDER

Let a suspensive appeal be granted in this case on behalf of the defendant, Freddie Eubanks, to The Supreme Court of the State of Louisiana, and let the return date be the 28th day of June, 1956, and pending said suspensive appeal let defendant be confined in the Parish Prison without the benefit of bail.

(Signed) Niels F. Hertz, Judge.

New Orleans, La., May 2, 1956.

[fol. 62] IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

Testimony Adduced on Motion To Quash Indictment
September 17, 1954

WILLIAM P. DILLON, 2418 Claiborne Avenue, called as a witness on motion of the defense, after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. What is your name?
A. William P. Dillon.
Q. How old are you?
A. Seventy years and nine months.
Q. How long have you been a resident of the City of New Orleans?
A. Since birth.
Q. Have you at any time during your life occupied a position in this community in connection with—let me put it this way:

By The Court:

I don't think the State will object to leading questions.

By Mr. Garon:

Q. —Such as being a Jury Commissioner?
A. Twelve years under Governor Long, Allen and Leche.
Q. Would you tell us what years those were?
A. From 1928 to 1940.
Q. Could you tell us briefly between 1928 and 1940 when you served as a Jury Commissioner—were you Chairman?
A. Yes.
Q. Tell us what method of selection, what the method of selection of names for the grand jury panel was.
A. The selection of names in the grand jury panel were drawn from the wheel, which is certified—I mean the Judge ordered a panel of 150 names and the Commissioners sub-

mitted a list of 150 names to the Judge that ordered the jury.

[fol. 63] Q. Going one step further back, how were the names placed in the wheel?

A. Well, jurors were qualified as jurors, and if acceptable, we put their names in the wheel. At that time we had people employed in certain crops, like sugar time, they asked for summertime. Men in the cotton, asked it be spring time. We tried to give jurors the time of year it was available for them to serve.

Q. From what source?

A. When I was Jury Commissioner, we tried all sources. We tried the directory, registration rolls, rosters, Water Commission, Boston Club, any place where we could, to have them qualified.

Q. You spoke of qualified, or all qualified would be placed in the wheel for service.

A. Qualified educationally more or less, men never been convicted of crime, and a man who we thought was really a man qualified as a juror. Those to be excused were men employed as laborers, men employed on an hourly bases in ship yards, carpenters, plasterers. We felt we might be depriving a man if he asked to be excused if he said he worked on an hourly basis to have him serve. We were there during depression time and we had quite a serious condition.

Q. Was there any minimum age requirement?

A. Yes. Twenty-one to sixty. It is sixty-five now, I believe.

Q. Was there any discrimination as to color?

A. None whatever. As far as color, I tried and in fact, Mr. Stanley was District Attorney, at the time the question had been raised about negro jurors in the wheel. We contacted a man in New Orleans at that time by the name of John Lewis who stood high with the colored people, head of several large insurance companies and a man whose standing among the colored people—they looked up to him, and another man, Dr. Frederick, a colored physician. I believe he died recently. We had them submit names, the roster of some of their clients of the insurance companies, which they did, and we taken—at the time there wasn't any [fol. 64] colored on the registration rolls and as far as

getting colored people off the registration rolls, it was almost impossible to do.

Q. Between 1928 and 1936, were any negores in the jury wheel?

A. On occasions, we had as many as 200.

Q. When specifically, between 1928 and 1936?

A. I can't estimate the time. We always had quite a few colored in the wheel.

Q. Mr. Dillon, we would like to know whether you are certain, under oath, understanding of course you have taken an oath this morning, and not to embarass you, but rather to refresh your memory, because after all we are asking you to testify to something that goes back many years, but are you absolutely sure there were negroes in the wheel in 1928?

A. When I went into office we had a wheel, the wheel wasn't in possession of the Jury Commissioners.

Q. Then you would not be certain as to 1928?

A. Oh yes. We got authority from one Judge to open the wheel, then we opened the wheel to clear to wheel. Sometimes,—of the two or three names in the wheel, we cleared out those names of negroes, and it is my recollection, but I am positive at all times from 1928 that I was Chairman of the Jury Commission, we had negroes in the wheel.

Q. Were they identified on the record as to white or colored?

A. We had nothing but a slip and that was made—we had no record.

Q. How could you tell whether they were white or colored?

A. We couldn't tell.

Q. How do you know in 1928 there were colored—

A. We qualified them.

Q. You didn't qualify colored in 1928, the year you took office?

A. No. The wheel was cleared out when we took office.

Q. Again I ask you, in 1928, could you be certain there were negroes in the wheel?

A. No.

Q. How about 1929?

A. 1929, positively negroes were in the wheel, and up to [fol. 65] 1940 when we went out of office, there was always negroes in the wheel.

Q. In your recollection, Mr. Dillon, do you know of any negro ever serving on the grand jury in the Parish of Orleans?

A. I don't know that. We didn't have anything to do with that. We submitted the names to the Judges, but I know negro names were listed.

Q. In other words, you know they were——

A. Yes. I had occasion to go in court and the men were there.

Q. You submitted how many names to the Judges?

A. It depended on what they submitted. Sometimes it was 150.

By The Court:

He is talking about grand jurors.

A. Seventy-five.

By Mr. Garon:

Q. You would submit those 75 names to the Judge?

A. To the Judge.

Q. What was your testimony with regard to those seventy-five? Were there or not negroes on that list of seventy-five names?

A. I don't know at all times, but I had occasion to see negroes. I didn't know they was negoes when they were drawn but I seen them in court.

Q. Among the seventy-five?

A. Yes.

Q. How often did you go into court?

A. On practically every occasion when the grand jury was empanelled.

Q. That is the panel of twelve men?

A. Yes.

Q. On those occasions that you would be in court,—how many grand juries were empanelled each year?

A. I think it is an average of two. Every six months they serve, I believe.

Q. They are composed of twelve men?

A. Correct.

Q. That would be twenty-four each year. Now, during, [fol. 66] as you say, you had occasion to be in the courtroom practically every time those twelve men were chosen. In

your service, do you know if any negro has ever been on the grand jury of the Parish of Orleans?

A. I wouldn't know that.

Q. In other words, you couldn't say, you don't know of a single negro who was a grand juror in all that time?

A. No, sir.

Q. And yet, of course you don't remember if there was a negro in the panel of seventy-five?

A. I believe I know that.

By Mr. Garon:

That's all.

Cross-examination.

By Mr. Haggerty:

Q. Whether they are white or colored, by law, would have to serve as possible jurors?

A. That's right.

Q. Certain persons are exempt by law?

A. Yes.

Q. Those provisions extend to those persons whether white or colored?

A. White or colored.

Q. And if a person at that time was over the age of sixty years, he would be exempt by law from service?

A. Yes.

Q. At the time these persons were qualified to serve as jurors, 1928 and through 1940, were the same excuses or reasons offered to the Jury Commissioners by both white and colored races?

A. Yes.

Q. Such as laborers?

A. Laborers, installment men, men working on an hourly basis, carpenters, men on commission. After we had lists submitted from insurance companies we found out they just didn't want to serve. We had to make a roster of every name. The jury commission never had a roster. [fol. 67] When Lewis came in with a list, I know Lewis was there and the Doctor, we subpoenaed all the names we had. There was very few on the registration rolls.

Q. Is one qualification literacy? You shall be able to read and write?

A. We had nothing in the Code like that. At that time if any of them were convicted.

Q. That's another question. That they not be convicted or in any trouble?

A. That's correct.

Q. Was any person ever rejected either by you or the Jury Commission simply because of his color?

A. Absolutely no, at no time. We were very very careful because we were—Mr. Stanley I believe, was District Attorney at the time, said and in fact he wrote a letter about it saying what we had done in selecting jurors and checking the wheel and had done about the colored people, he said he thought that was a very very wise move.

Q. You said something about 1928, when you first became Chairman of the Jury Commission, the jury wheel was cleared. By that you mean entirely replenished?

A. No. In other words, there was deficiencies in there and we had an order from one of the Judges of the court to clear the wheel and if we found a man's name in there he was qualified for service. We couldn't take names out, we had to go to a Judge to issue an order with a reason for the name to be removed. But if we sent that man another notice and have him appear and qualify him, he was qualified and placed in the wheel.

Q. There was no indication on the form a person filled out at that time indicating whether that person was colored or not?

A. No way.

Q. There was no way of telling in 1928, but you do remember positively there was colored persons qualified as grand jurors in 1929?

A. I know positively.

[fol. 68] Q. Who was Chairman of the Jury Commission before you took office?

A. They had two Chairmen I believe, Mobrey, and who else—he died from the first war. Roussell, Tom Roussell.

Q. As I understand, during the regime of Mr. Stanley as District Attorney you were Chairman of the Jury Com-

mission, and you made extensive effort by consulting with Dr. Frederick and Lewis——

A. —And others. I mean the insurance companies we thought was a good start on names to take and secure names of colored people.

Q. As a result of that, did you replenish?

A. We had replenishment, but most men were employed by Smith & Sons, or Stevedoring Companies, by the hour. Some of them, repairmen and plasterers. We had a hard time qualifying those we did qualify. I don't recall any time any of them come up and volunteered.

Q. The fact a person works by the hour or on commission basis is not a legal excuse, but you did in your discretion, excuse colored as well as white?

A. We did. We had a whole lot with insurance debits that claimed their income was derived from the debit they collected.

Q. Just for the record, are negroes or members of the colored race who are attorneys, physicians and surgeons, are they excused?

A. Correct. That don't only apply to colored. It applies to whites.

Q. And school teachers?

A. Correct.

Q. And school bus drivers, under Section 3 of R.S. 15:174. Apothecaries, and all members of paid fire departments, and all commercial travelers, residing in the state who are actually engaged in traveling for themselves or in the interest of wholesale dealers, commission merchants and manufacturers; and all persons over the age of sixty-five?

A. Yes.

[fol. 69] Q. If a person is blind and can't hear they are physically impaired. They can't serve?

A. Correct.

Q. That would apply to any person whether white or colored?

A. Definitely. Hearing applies to all.

Q. And, electrical and water works systems.

A. Correct.

Q. These would apply to a person whether white or colored?

A. White or colored.

Q. Do you know at any time during your twelve years' service as Chairman of the Jury Commission, that any person was refused qualification as a possible juror because of his color alone and not because of some reason that would be a reason you would excuse a person, whether white or colored?

A. No. We were very anxious to get negroes to qualify. We had a couple of times, we had been asked by lawyers about negroes. And I told them to go out and find them and get us the right qualifications, right type of men, and we will be glad to qualify them by every possible means, to take and get the names of negroes eligible to be put in the wheel. We done that.

Q. Was that 1929?

A. That was the whole time I was in the office. In fact, I stressed that very strongly. It was the law.

Q. One of the requirements under the law, to be qualified originally as a grand juror, he must be able to read and write. Is that one of the requirements?

A. No, sir, it wasn't at that time. We never had anything like that in the Code. As far as selection of the jury, we had nothing to do with that other than names submitted to the Judge. It was strictly up to the Judge to select the jury.

Q. You mentioned something in your direct testimony, certain persons would want to be excused for certain periods of time, such as the sugar industry and cotton industry, you would try to put them off until the time was fit.

A. We did. During October and the grinding season, we would not work on those men for three or four months, [fol. 70] then we wouldn't put their names in until the time they asked to be put in. If they asked for January—sometimes we qualified jurors three or four months in advance.

Q. Was the same service done for the negroes?

A. We made no distinction at all.

Q. Prior to 1928, do you have independent recollection before you became Chairman, do you have independent knowledge of a person of the colored race, that is, a negro, put in the jury wheel and being in court possibly as a juror in a criminal case?

A. No, I wouldn't know anything about that, but I was told about——

By Mr. Garon:

I object.

By the Court:

Don't express your opinion.

By Mr. Haggerty:

Q. Mobrey, you say he told you something. Was that Clark Mobrey?

A. He was Jury Commissioner.

Redirect examination.

By Mr. Garon:

Q. I take it that those who were not exempt, those that Mr. Haggerty recited, were people not on commission bases, who were not in the special fields, like medicine, dentists, apothecaries, but people who own their own business, have stores of their own, insurance companies. They were not exempt?

A. We had them in.

Q. Both colored and white?

A. We found that out if they qualified. You know practices change. We had them to come in and then we could see if they were intelligent and——

Q. Does that apply to both white and negroes?

A. I am referring to negroes now.

Q. Your answer is yes?

A. Yes.

[fol. 71] MACK A. DYER, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. Your name is what?
A. Mack A. Dyer.
Q. What is your position or employment?
A. Registrar of Voters.
Q. How long a time have you held that position?
A. May 16th, 1952.
Q. Mr. Dyer, I see that you have a memorandum dated September 16, 1954, which is addressed to Mr. Dyer. Is that you?
A. Yes.
Q. Below I give you, for the past four years, the total registration, as well as the white and colored, according to our records. Signed by Marcel J. Brunet, Chief Deputy.
A. That's right.
Q. Can you testify whether Brunet holds the position of Chief Deputy in your office?
A. I can.
Q. Are you able to testify to these figures as prepared by Brunet from the official files of your office for the years 1951 through 1954, as they are indicated on the memorandum?
A. Yes.

By Mr. Haggerty:

We do not object to these.

By Mr. Garon:

Q. Mr. Dyer, are there any qualifications to be a registered voter in the Parish of Orleans?
A. The law requires you must be a resident of the State for two years and the parish one, and you must be able to read and write and fill in an application card, if you cannot read and write, in the presence of two registered voters who will make affidavit they know you to be that particular person and you are unable to write.

A. No. The colored were qualified on identically the same bases that we qualified white people. Does that answer the full question.

Q. They were excused for the same reasons?

A. They were excused for identically the same reasons whites were excused.

Redirect examination.

By Mr. Garon:

Q. Who served between 1940 and 1942? There is a gap there?

A. David Casey.

Q. That is Casey now in Judge Rainold's court?

A. That's correct.

By Mr. Garon:

That's all.

V. G. WARNER, called as a witness on motion of the defense, when after being first duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. Your name is what?

A. V. G. Warner.

Q. You are presently the Chairman of the Jury Commission?

A. Correct.

Q. You have heard both Mr. Dillon and Mr. Douglas testify in court today?

A. Yes.

Q. And you were able to hear all the answers to questions propounded to them?

A. Yes.

Q. I ask you sir, would your answers to the questions propounded to both of these gentlemen by both defense counsel and the state, would you answer the questions in the same way those gentlemen did?

[fol. 87] A. I met the same experience of Douglas and immediately when I took over as Chairman we made the same efforts. We have letters where we wrote the housing, and others, and got lists of persons, the same thing as Douglas.

Q. Your tenure of office was what year?

A. I took office in October 1952.

Q. One question I am particularly interested in, whether you know of your own knowledge there was a change in the system in the year 1936.

A. I wouldn't know, sir.

Q. And, do you know of your own knowledge whether any negro has ever served on a grand jury in the City of New Orleans?

A. I wouldn't know that.

By Mr. Garon:

That's all.

Cross-examination.

Mr. Haggerty:

Q. Since you have been Chairman of the Jury Commission for the Parish of Orleans—you are the present Chairman, are you not?

A. Correct.

Q. Therefore, the grand jury that indicted the defendant was selected during your regime?

A. Correct.

Q. As far as you know, during the period of time from October 1952, has your office under your supervision and direction, ever disqualified a prospective juror because, and only because, of his color being, being a negro?

A. No, sir.

Q. And have the same qualifications in your office—been the same for white and colored in accepting jurors?

A. That's correct.

Q. And, has your office in the City of New Orleans in its discretion excused prospective jurors for the same reasons, that is, men working on commission, repairmen, and have excused white and colored for the same reasons?

A. I have.

[fol. 88] By Mr. Haggerty:

No further questions.

DUDLEY DESMARE, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. You are Mr. Dudley Desmare?
A. Yes.
Q. You are a resident of the City of New Orleans?
A. Yes.
Q. You served as Jury Commissioner for what period?
A. 1948 to 1952.
Q. You have been in the courtroom this morning?
A. Yes.
Q. You heard Mr. Dillon and Mr. Douglas and Mr. Warner testify in the case?
A. That's right.
Q. Would your answers to questions propounded by both defense counsel and the state to these gentlemen be the same as the gentlemen I referred to?
A. Yes.
Q. Do you have any knowledge of a change in the selection of people for the wheel in 1936?
A. No, sir.
Q. Do you know in your experience as a resident of the City of New Orleans and as a Jury Commissioner, whether there has even been on any grand jury in the City of New Orleans, a negro who served?
A. No, sir.
Q. You don't know?
A. No, sir.
Q. Do you know the name of any negro who ever served on the grand jury in the City of New Orleans?
A. No, sir.

By Mr. Garon:

That's all.

there has been a system devised by the law and enforced by your office or your representatives, in which negro children as well as white children have been required to attend public schools?

A. Purely as an estimate, I would say at least thirty years.

Q. Briefly Mr. Becker, do you have a system of employment of Truant Officers or other agency of the Public School system?

A. They no longer use the term Truant Officer. They use the term Visiting Teachers. It serves the same purpose which is to contact homes in connection with children who are absent or tardy, or get in some unusual type difficulty in school. We have a department in that service, both white and colored.

Q. Indiscriminately?

A. That's right.

Q. This was put in force, estimating something like thirty years ago?

A. Estimating.

Q. Up to the present time?

A. That's right.

Q. What is the highest grade a student or child must attend school by the compulsory method? In other words, how long does a child have to go before satisfying the state in Public Schools?

A. Obviously, you can't say, because some child could maybe be by himself in his own age group. It is age basis, 16, not grade basis but age.

Q. In other words, it is the year, the 16th year of a child's' life?

A. Up through 16.

Q. Both negroes and whites must attend school?

A. Yes.

Q. Can you tell us from your official records the number of public schools grade level in the City of New Orleans?

A. I think so. For the session 53-54, there was 51 white grade schools, 32 negro grade schools. Now, perhaps it [fol. 76] should be brought out too, there is a variation in grade, both among the white and negro of the system, changing from the original 8 elementary and 4 secondary, to 6 elementary, 3 junior high and 3 senior high. The

[fol. 89] Cross-examination.

By Mr. Haggerty:

Q. Were you present in Judge Cocke's court recently, about three years ago, when a negro named Walker testified under oath he was a member of the grand jury, having been appointed by Judge Charbonnet when Judge Cocke was District Attorney?

A. I don't remember.

Q. During the period you were a Jury Commissioner, 1948-1952, was the same test in qualifying given by your office for the qualification of both white and non-white, that is, negro persons, in applying for jury service?

A. Yes.

Q. Was any person any time ever refused qualification as a possible juror because he was of the negro race?

A. No.

Q. Were the same excuses and same service rendered both white and non-white from serving by the Jury Commission office?

Testimony Adduced on Motion To Quash Indictment— January 4, 1955

STIPULATION AS TO TESTIMONY OF MESSRS. CROSS, KNOWLES, WARNER AND HOGUE

By Mr. Garon:

Mr. William Cross, Mr. Danny Knowles, Mr. V. G. Warner and Mr. William Hogue, have been subpoenaed as defense witnesses for the purpose of this hearing.

It is stipulated by and between the state through proper representation and the defendant through Herbert J. Garon and Joseph A. Gowan, attorneys, that were these gentlemen called to the witness stand they would testify as follows:

[fol. 90] That Mr. Cross was Chairman of the Jury Commission from 1948 to 1952; that during that period he knows that there were negroes in the wheel—in the jury wheel, and that he knows that negroes appeared on the lists of 75 names in the grand jury venire panel submitted to the judges during that period of time.

changing process is not yet complete so the grade might be subject to variation both as to race and as to the number of grades included.

Q. The 51 white grade school enrollment. How many students were there during that period?

A. For the same session the white school elementary enrollment was 26,900.

Q. And for the 32 negro grade schools, what was the enrollment?

A. 26,129.

Q. Have you a list of the number of teachers in each of the white grade schools and colored grade schools—the negro grade schools?

A. Yes. In the elementary white, 860. In the negro, 677.

Q. Now, your statistics one step further, in the high school level. How many public white high schools were in operation in the City of New Orleans?

A. I would have to answer that question from the over-all view of secondary schools because my statistics includes junior and senior high schools. Would that be satisfactory?

Q. It would be, yes.

A. White secondary schools, 18, Negroes 9.

Q. Enrollment per year on each?

A. White enrollment 12,422, negroes 7,243.

Q. And the number of teachers in each of the secondary schools for that period?

A. White 550, negroes 301.

Q. Do you know of your own knowledge Mr. Becker, whether the teachers that you list for the negro schools in both grade and secondary level are negro teachers as well as white teachers? In other words, the 301 figure you gave and the 677 figure, totaling approximately 1000 teachers of the negro schools, would that be negro teachers in the majority of instances?

[fol. 77] A. You mean by race?

Q. By race.

A. As far as we know they are all negroes.

Q. Then, for the advanced education, Mr. Becker, the colleges and universities. Do you have a record of any colleges and universities for both whites and negroes that exist in this community, the City of New Orleans?

Mr. Danny Knowles and Mr. Warner would testify to the same set of facts, and, Mr. Warner would testify in addition, that he is familiar with the composition of the Hartson grand jury selected by Judge Echezabal to serve from March 1, 1954 to September 1, 1954, which grand jury returned the indictment against Freddie Eubanks on June 8, 1954, and that he knows by checking the original notices filled in by the jurors or prospective jurors themselves, that there were 6 negroes among the 75 names submitted to Judge Echezabal. He would also testify that this record is contained in the grand jury book located in his office. He would further testify that the subpoenas as well as the panel in the case of Judge Echezabal, that a list of 75 names was brought to Judge Echezabal, representing the grand jury venire from which this grand jury was eventually chosen, together with addresses of each of the 75, and public addresses and occupation and telephone number of each of the 75 names, as an aid to Judge Echezabal; and, that color was not indicated on this list submitted to Judge Echezabal.

By Mr. Haggerty:

I agree to that.

By the court:

It is agreed and stipulated by counsel for the defendant and counsel for the state, that if these witnesses, to-wit: Mr. Cross, Mr. Knowles and Mr. Warner, were called to testify as witnesses in this case they would testify according to the stipulated statement of facts.

By Mr. Garon:

And we are making that stipulation part of the record in lieu of their testimony.

A. For both?

Q. For either or both.

A. I would have to speak from memory on that. You have schools for the white people, Tulane, Loyola—I think Loyola has some negroes also enrolled, you have Dominican, you have Ursulines; that's about as far as I can think right now.

Q. Some negroes do attend Loyola, 1953-1954?

A. That's my information.

For negroes, of course you have Xavier and Dillard. You have also throughout the state——

Q. In New Orleans.

A. Xavier and Dillard.

Q. Are there any industrial schools you know that are more or less colored?

A. The only approach to industrial schools would be Booker Washington High School.

Q. Do you have an idea of the enrollment in Xavier and Dillard?

A. No, I wouldn't want to guess on that.

Q. Would you be able to say without equivocation it was more than a thousand?

A. Between the two?

Q. Between the two.

A. I think, yes.

Q. Are you aware of the fact that there are negro professors at both Dillard and Xavier?

A. Yes.

Q. Are there any white professors to your knowledge at those universities?

A. Yes.

[fol. 78] Q. These statistics you have given us I understand to be for the period 1953-1954?

A. Correct.

Q. Do you have any other statistics with you that would date back further than 1953?

A. Yes.

Q. How far do your figures go back, Mr. Becker?

A. I can go back to 1923-1924.

By Mr. Garon:

We are through with Mr. Becker's testimony for the purpose of developing this part of our case.

[fol. 91] A. DALLEN O'BRIEN, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. You are Mr. A. Dallen O'Brien?
A. I am.
Q. What is your position with the federal court?
A. Clerk, U.S. District Court.
Q. For what period have you held that position?
A. Since August 1939.
Q. Do you also have another capacity or as Clerk of the U.S. District Court, do you exercise the preparation of a complete list of names from which the federal grand jury was selected?
A. I do. I am exofficio Jury Commissioner.
Q. Who serves in that capacity with you?
A. Roy Watson.
Q. How long has Mr. Watson served, if you know?
A. I don't know exactly the number of years.
Q. Would you tell us, Mr. O'Brien, briefly, without leaving out the details, the modus operandi of your office of your procedure in the gathering of names for the federal grand jury during your period in office?

By Mr. Haggerty:

The state wishes to interpose an objection. The methods used in federal court do not correspond with Louisiana laws.

By the Court:

Objection sustained.

By Mr. Garon:

To which ruling of the court, the defendant reserves a bill of exception, making a part of the bill of exception the question asked of Mr. O'Brien, the objection by the assistant district attorney, the reasons if any, of the court, together with the indictment in this case.

Cross-examination.

By Mr. Haggerty:

Q. Those figures, Mr. Becker, do not include private and parochial schools in the City of New Orleans?

A. No.

Q. Are you in position to give an opinion as to how many private and parochial schools there were for the same period of time, 1922-23 and 1953-54?

A. I am not.

Q. Are there more parochial schools in the City of New Orleans than public schools?

A. I would think not.

Q. Elementary schools?

A. Again, I would think not.

Q. Do you have any official figures to show the number of grade parochial schools and private grade schools?

A. I have not.

Q. Can you give us an opinion as to how many there are in the City of New Orleans at the present time?

A. No, sir.

Q. Those figures you did present to the court for the period of time requested by Mr. Garon and Mr. Gowan, did not cover the parochial system of the City of New Orleans nor did it include the private schools in the City of New Orleans?

A. That's correct.

[fol. 79] Q. Of your own knowledge, do you know whether there are colored parochial schools in the City of New Orleans?

A. Yes.

Q. Do you know how many?

A. I do not.

Q. Do you know whether or not there are colored private schools in the City of New Orleans?

A. Yes.

Q. Do you know how long they have been inexistence?

A. No.

Q. Can you give us an opinion as to how long?

A. I can give you information to the effect they extend as far back as 1883. Southern University, which has since moved to Baton Rouge, that has existed that long. New

By Mr. Garon:

[fol. 92] Mr. O'Brien, to your knowledge has there ever been a negro or negroes serve on a federal grand jury during your tenure of office?

A. I would say we have a minimum——

By Mr. Haggerty:

The state objects.

By the court:

Objection sustained.

By Mr. Garon:

Reserve a bill.

I would like to have the testimony for my bill.

By the court:

Answer the question.

A. Yes, we have at least two I would judge, but I am guessing to a certain extent because I have not made a check of the records; but according to my recollection I would say there was at least two during a period of a year for two grand juries during that year.

By Mr. Garon:

Q. There would be at least two or three on each over a period of a year?

A. Two over a period of a year, perhaps more than that, but I would say a minimum without having checked the records, there were at least two.

Q. Are you specifying any particular year or an average year?

A. Average. A number of years back.

I testified in this same court in another case and at that time at the request of Mr. Gulotta, I had made a search of the records and that testimony, of course, is more accurate than I am giving today. Today is purely by recollection. I did not know exactly what questions were to be asked and therefore made no details.

Q. In what case?

Orleans University, a private school for negroes began in 1869 and was discontinued in 1953, being incorporated in Dillard University. State College, another private school began in 1869 and again, like New Orleans, became part of Dillard in 1935. Xavier was a high school in 1915.

Q. I believe a person who would be in possesion of information we are seeking would be Marange. Would that be?

A. Yes, I think he would, and I think you could get good information along that line from Mrs. Ann Whitaker. She keeps data for private and parochial schools.

Q. Where can she be located?

A. New Orleans Public School Headquarters, 703 Carondolet Street.

Q. Going back 34 years of the school system, 37 years rather, and taking into consideration the testimony given by you this morning going back 30 years, can you tell the court whether this truant system or visiting teachers system was ever enforced?

By Mr. Garon:

I object to the question. Mr. Becker testified it would be for absence and tardiness, not enforcement of the compulsory method.

[fol. 80] By the Court:

Rephrase the question. He wouldn't know of his own knowledge.

Objection overruled.

By Mr. Haggerty:

Q. If a colored family did not see fit to send their children to school, going back 25 or 30 years, even as late as 1940 and 1950, children 7, 8, 9 up to 16 years of age, and they chose not to send them to school, was there any effort maintained during the last 30 years up to the last 5 years whereby they were forced to attend school as well as families of the white race?

A. I have already testified that in my opinion the compulsory attendance law or the effectiveness thereof, has been a question of some 30 years. I have no personal knowl-

A. I don't remember. Mr. Gatlin was representing the defendant and Mr. Gulotta the state.

[fol. 93] Q. Would you be able to testify Mr. O'Brien, that from that average of at least two for each year that you are familiar with the fact at least one of those was a resident of the Parish of Orleans?

A. I would say I don't recall a negro ever being on the grand jury who was a resident of another parish. We draw grand jurors from the parish——

Q. How do you draw your grand jurors, from what source?

A. We draw them from the four parishes but in view of the fact a personal interview was had with each juror, it is more difficult to draw jurors from Plaquemines Parish than Jefferson and Orleans and parts of St. Bernard, so for the most part jurors are drawn from the Parish of Orleans and Jefferson such as Metaire, and parts of St. Bernard.

Q. I meant more specifically, from what source do you get the names.

A. We get names from the city of New Orleans from the city directory. Then, we get the names of course, also from the Parish of Jefferson from the same directory.

By Mr. Garon:

That's all.

Cross-examination.

By Mr. Haggerty:

Q. I just want to ask one question. Each grand jury numbers how many. The total amount of each grand jury is composed of how many members?

A. 23.

Stipulation as to Testmiony of Roy Watson

By Mr. Garon:

I would like to stipulate that if Mr. Roy Watson were called to testify, he would testify substantially the same way as Mr. O'Brien.

By Mr. Haggerty:

I agree to that.

edge as to how effective the carrying out of that law was for the simple reason I have had no direct control or connection therewith. Actually, to say further, that within the last 10, 12 or 15 years, it is my very definite conviction there has been equal administration. Before that, I wouldn't venture an opinion.

Q. You say during the last 10 or 12 years it has been equally enforced between white and colored?

A. Yes.

Q. Before that you wouldn't care to venture an opinion?

A. For lack of information.

Q. To your knowledge did they have any member of the negro race as a member of the truant or teachers staff prior to 12 years ago?

A. I would say no.

By Mr. Haggerty:

No further questions.

Redirect Examination.

By Mr. Garon:

Q. You are the same Mr. Ernest O. Becker who testified in the Dowels case?

[fol. 81] By Mr. Haggerty:

I object to any other case being brought in as an enlargement of the pleadings.

By the Court:

Objection sustained.

By Mr. Garon:

Q. You have heretofore testified in your capacity as Assistant Superintendent of Public Schools?

A. That's right.

By the Court:

The reason I sustained the objection is on the principle you can't identify your own witnesses.

[fol. 94] JUDGE FRED W. OSER, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. Would you give us your full name for the record?
A. Fred W. Oser.
Q. You are judge of the Criminal District Court, Section "C".
A. That's right.
Q. I might add, I had the privilege and pleasure of serving with you for two years.
A. Yes.
Q. Judge Oser, when did your term of office begin as a judge?
A. 1936.
Q. Since that time, or at the time you took the bench in 1936, there were 5 sections of the Criminal District Court?
A. Yes, we added Section "F" later.
Q. Would that mean your opportunity to select the grand jury came up every two and a half years?
A. Around two and a half years.
Q. You had uninterrupted tenure of office from 1936 to the present time?
A. Yes, except three months' sickness.
Q. During that time the grand jury you selected, did you ever select a negro to serve on any of your grand juries?
A. No, I didn't. I was given a list of 75 names and I think the law says I can pick any 12 names I want. I picked the 12 men I thought was the best grand jurors and from them I appointed a foreman.
Q. Did you interview any of the 12 men?

By Mr. Haggerty:

I object.

By the court:

Objection overruled.

By Mr. Garon:

Judge O'Hara made repeated reference to him in his per curiam.

By Mr. Haggerty:

That is what I wanted to keep out. Any other record.

By the Court:

I will sustain the objection.

WALTER E. DOUGLAS, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. Your name is what?

A. Walter E. Douglas, Jr.

Q. You are employed in what position in the City of New Orleans?

A. Jury Commissioner.

Q. How long have you served as Jury Commissioner?

A. I was previously a Jury Commissioner from 1942 to 1948, and again I have been there since November 1952, not all that time as Jury Commissioner but part of this time as Secretary of the Board. That's just a title.

Q. To the present time?

A. To the present time.

[fol. 82] Q. Are you in position to know whether, during the period of time you served as jury commissioner, that negroes were in the wheel from which the grand jury was subsequently selected?

A. I can definitely say so, yes.

Q. Do you know how long, from what early date were negroes placed in the wheel in the City of New Orleans for that purpose?

A. From the period of 1942 through the period of 1948, and again from 1952 to the present time.

By Mr. Garon:

Q. Would you tell us the manner in which—in other words, you are submitted 75 names from the jury Commissioners?

[fol. 95] A. Yes.

Q. Would you tell us from that 75 names, how you eventually arrived at the 12 grand jurors?

A. I sent out letters for these gentlemen to come in and see me.

Q. Did you send letters out to all 75?

A. No, sir, I did not.

Q. Can you tell us approximately the number you sent out letters to for the purpose of interview?

A. No, sir, I don't remember that.

Q. Would it be about twenty or twenty-five?

A. More t' n that.

Q. Approximately thirty or thirty-five?

A. In between that. There is a lot of names I know on a grand jury list, men who have been living here. I am 63 years of age and I know lots of folks. Sometimes I don't send them letters, I phone them to come in and see me.

Q. Would this be fair to say you select from the 75——

A. —the best 12 I thought was on the list.

Q. A smaller number of the 75 would be interviewed?

A. Yes.

Q. Because of the character and high morals of those individuals and integrity.

A. I will answer that by saying that I picked out the best 12 men on that list for my grand jury.

Q. Those 12 were selected from a group smaller than 75. In other words, you didn't send out letters to all 75.

A. No, I did not.

Q. Did you ever send a letter to a negro to be interviewed for the purpose of serving on a grand jury

A. I can't tell you that because I didn't know who were negroes and who were white, and there is no mark of distinction between white or black.

Q. When you interviewed these gentlemen for the purpose of selecting a grand jury, did that take place in your office?

A. In the office and courtroom.

Q. Do you ever remember, since 1936, have you interviewed a negro?

Q. You have no knowledge of what happened prior to 1942?

By Mr. Haggerty:

I object. He can testify only to when he was in the office.

By the Court:

How could he have knowledge when he wasn't there. I will sustain the objection.

By the Court:

Q. Do you have knowledge?
A. Yes.

By Mr. Garon:

Q. What is the earliest date you recollect?
A. I would say from 1940 on.
Q. And later years.
A. Yes.
Q. Do you know of your own knowledge whether there has ever been a negro serve on any grand jury in the City of New Orleans during that same period of time?
A. That, I wouldn't definitely know, with this one exception. There was a colored man by the name of Walker, whether he served as a grand juror or petty juror I wouldn't know. I do know he is a colored man, I happen to know him and that's the reason I am familiar with this case.
Q. You know someone by the name of Walker who served on some jury?
A. That's correct.
[fol. 83] Q. From your knowledge of this particular man, does he look like a white man or look like a negro?

By Mr. Haggerty:

I object.

By the Court:

What is the purpose of the question.

By Mr. Garon:

Q. Is the man Walker you referred to dark skin or light skin?

A. I would say Mulatto.
Q. Mulatto skin?
A. That's right.
Q. Is that a colored man?
A. He isn't white if you were to look at him. I would say that.
Q. Does he have straight hair or kinky?
A. Kinky hair.

By the Court:

Q. You say he served on the grand jury?
A. I wouldn't know. I know he served on a jury.

By Mr. Haggerty:

We stipulate that.

By Mr. Garon:

Q. You were in court during the testimony of Mr. Dillon?
A. That's correct.
Q. Insofar as his testimony was concerned, would you testify substantially the same way if the same questions were propounded to you?
A. That's correct, with this one exception—this one addition. That special effort has been made by the present jury commission going through that which he stipulated, the registration office, but we have made special effort through the registration office to see if there was a predominant amount of negroes and we have subpoenaed them. In addition to this, we have subpoenaed all those areas according to the 1950 census, which I obtained the figures for, areas that were predominately colored. We took then, each colored housing project that we were able to obtain [fol. 84] the list of names from the housing authority. That's the only additional testimony I could add.
Q. That occurred during the years you served as Jury Commissioner?
A. Correct.
Q. Then your testimony would be, in fact there was qualified negroes in the wheel during the period of time you served as Jury Commissioner?
A. That's correct.

Cross-examination.

By Mr. Haggerty:

Q. The grand jury which indicated this defendant, Freddie Eubanks, was the grand jury that went out of office, having been selected by Judge Echezabal for the last six months prior to the present grand jury. That group of 75 names which was tendered to Judge Echezabal from which he selected his grand jury and which grand jury indicted the defendant before the bar, that grand jury of 75 names was taken from the wheel that you have testified to just this morning, and that wheel was set up by the present Jury Commission office under the provisions and special effort you have stated in your testimony, commenced when. When did this commence, this special procedure?

A. In November 1952.

Q. That method or procedure was in effect when the 75 names were taken from the wheel and given to Judge Echezabal so that he selected the grand jury you testify to?

A. Correct.

Q. During the period 1942 to 1948, when Habans was Chairman of the Jury Commission, were any special efforts made by Habans you were personally cognizant of to the same effect that special efforts were made to seek out, to have the wheel include negroes and men qualified as jurors?

By Mr. Garon:

We have Mr. Habans subpoenaed.

By the Court:

Objection sustained.

[fol. 85] A. I can testify to what I did at that particular time.

By Mr. Garon:

He has already testified to what he did.

By Mr. Haggerty:

I don't believe he did. This is 1942 to 1948.

By the Court:

He testified to that.

By the Court:

Q. What years did you cover?

A. 1952 to the present time. If you want me to cover what efforts were made during that time I will be glad to testify to that, what I made during that time.

By the Court:

The court will rule he is entitled to testify to any efforts he made.

By Mr. Garon:

It has to do with the stipulation and this gentleman already stipulated he would substantiate what Mr. Dillon did. Mr. Dillon stated he went to various negroes, the doctor and so on——

By the Court:

You are wasting a lot of time now. He is testifying to what he did.

A. Now, in 1942 to 1948, when Mr. Habans was there, we got together—we had made some effort to obtain colored people prior to my being appointed. When I was appointed we decided to go further and at that time we called into the office, I was present at the office at the time they were called in, various colored leaders and they submitted to us names. The names were subpoenaed to serve if qualified to serve as jurors in the wheel.

By the Court:

That is substantially what Mr. Dillon testified.

By Mr. Haggerty:

Q. At any time you were connected with the Jury Commission office, 1942 to 1948 or November 1952 to the present, [fol. 86] were any persons ever rejected from jury service because of the fact they were of the negro race?

[fol. 96] Yes, I think I have.

Q. You are not quite sure?

A. I am almost positive. Every two and a half years, a
if you have a jury of around 60 men each month Mr. Gar
your mind is hazy. But I will tell you this: I never had
negro on my grand jury. If that is what you want.

Q. So far as you know of your own knowledge do y
know of a negro ever serving on a grand jury?

A. Are you going to ask me whether I know that of
own knowledge or hearsay?

I have heard a negro served, but none has ever serv
on my grand jury.

By Mr. Garon:

That's all.

Cross-examination.

By Mr. Haggerty:

Q. For the record could you tell us whether negroes ha
been on the petty jury during the entire term you ha
served as judge since 1936, each and every month, up to
2, and up to 10 negroes on the petty jury panel?

By Mr. Garon:

I don't know that that would have any particular bearin

By the court:

Objection overruled.

By Mr. Garon:

Take a bill of exception, making the testimony part of t
bill.

By Mr. Haggerty:

Q. Since you have been a judge of the Criminal Distr
Court since 1936, do you individually remember negro
appearing in your courtroom as members of the petty ju
panel each month?

A. Yes, I had one serve on the jury.

Q. Particularly 1936, do you remember that far ba
negroes did come into your office and court on the pet
jury?

[fol. 97] A. Positively.

Q. So far as the last five or ten years is concerned, what has been the average group of negroes on petty jury panels each month?

A. I would say anywhere from 4 to 7.

Q. I think from the record you know petty jurors are drawn from the same wheel grand jurors are drawn from.

A. Yes. The only difference is, in petty juries they give me 150 names and grand juries 75 names.

By Mr. Haggerty:

Thats all.

In Criminal District Court for the Parish of Orleans
State of Louisiana

[Title omitted]

Agreement and Stipulation Between State and Counsel for Defendant Re Testimony of Messrs. Stanley, O'Connor, Racivitch, Darden and Hubert

The State of Louisiana through the undersigned and Freddie Eubanks through his Attorneys Herbert J. Garon and Joseph Gowan, do hereby present the following agreement and stipulation to be made a part of the record in the above numbered and entitled cause, to-wit:

1. Mr. Eugene Stanley has been called as a defense witness in this case and it is agreed by both parties that he would testify as follows:

That he was the District Attorney for the Parish of Orleans from 1927 to 1935; that as the legal adviser for the Grand Jury during this period, he is entirely familiar with the composition of the said Grand Jury; that to his knowledge no negro served on any of the Grand Juries during his [fol. 98] tenure of office; that he has been Attorney General for the State of Louisiana and has been identified with the practice of criminal law since his admission to the Bar, and that he has not known of any negro ever serving on the Grand Jury for the Parish of Orleans.

2. Mr. James O'Connor has been called as a witness for the defense and would testify that he was the District

Attorney for the Parish of Orleans from 1944 to 1946, a
that in his capacity he was entirely familiar with the co
position of each of the Grand Juries that served during th
time; that no negro served on the Grand Jury during h
tenure of office and that to his knowledge no negro h
ever served on the Grand Jury for the Parish of Orlea

3. Mr. Herve Racivitch has been called as a witness f
the defense and would testify that he was the District A
torney for the Parish of Orleans from 1946 to 1950, a
that in his capacity he was entirely familiar with the co
position of each of the Grand Juries that served duri
that time; that no negro served on the Grand Jury duri
his tenure of office and that to his knowledge no negro h
ever served on the Grand Jury for the Parish of Orlea

4. Mr. Severn T. Darden has been called as a witness f
the defense and would testify that he was the Distr
Attorney for the Parish of Orleans from 1950 to 1954, a
that in his capacity he was entirely familiar with the co
position of each of the Grand Juries that served during th
time; that no negro served on the Grand Jury during h
tenure of office and that to his knowledge no negro h
ever served on the Grand Jury for the Parish of Orlea

5. Mr. Leon Hubert has been called as a witness for t
defense, and it is agreed that he would testify that he
currently the District Attorney for the Parish of Orlea
that he has served as District Attorney since May of 19
that he has therefore been acquainted with two Grand Juri
for the Parish of Orleans in his capacity as District A
torney; that on neither of these two Grand Juries has the
been a negro; that to his personal knowledge he knows
no negro having ever served on the Grand Jury for
Parish of Orleans.

[fol. 99] This agreement and stipulation entered into th
4th day of January, 1955, by and between the undersign
parties.

(Signed) Leon D. Hubert, Jr., District Attorn
Parish of Orleans. (Signed) Edward A. Ha
gerty, Jr., Assistant District Attorney. (Signe
Peter J. Compagno, Assistant District Attorn
(Signed) Herbert J. Garon. (Signed) Jose
Gowan, By HJG, Attorneys for Defendant.

STIPULATION BETWEEN STATE AND COUNSEL FOR DEFENDANT RE PROPOSED OFFERS IN EVIDENCE

The following is a stipulation which I agreed to with Mr. Garon, with the understanding that the State would reserve its right to object to admissibility of the evidence covered by the stipulation:

That the defense could produce as witnesses 100 negroes qualified as Grand Jurors who are business or professional people, who are residents of the Parish of Orleans and who have never served as Grand Jurors.

This stipulation is made provided the defense will make the following corresponding stipulation:

That the State could produce a proportionate number of members of the Caucasion race qualified as Grand Jurors who are business or professional people who are residents of the Parish of Orleans and who have never served as Grand Jurors.

STIPULATION AS TO COLORED MALES ON THE GRAND JURY PANEL OF MARCH 1954 TO SEPTEMBER 1954.

By Mr. Garon:

Mr. V. G. Warner would testify that the 6 negroes on the venire of 75 submitted to Judge Echezabal for the grand [fol. 100] jury that indicted Freddie Eubanks were 6 qualified negroes, qualified to be selected as grand juroirs as follows:

1. Willie Bluntson, 3320½ First Street.
2. William Joseph Brousseau, 2930 S. Saratoga Street, 2437 Tchoupitoulas Street (Neeb, Kearney & Co)
3. Walsdorf Rivers Ellis, 2313 Soniat Street, #11 Trianon Plaza.—O.P. Carriere.
4. James Joseph Johnson, 2508 Louisiana Avenue, 6823 St. Charles—Tulane University.
5. Alfred Theodore Lavigne, 681 N. Prieut Street, 615 North Street—Times Picayune.
6. Rev. Thomas Leander Payne, 2879 LaSalle Street, 2437 Tchoupitoulas Street, (Neeb, Kearney & Co)

JUDGE GEORGE P. PLATT, called as a witness on motion the defense, when after first being duly sworn, testified follows:

Direct examination.

By Mr. Garon:

Q. Would you give your full name for the record?
A. George P. Platt.
Q. You have served as judge of the Criminal Dist Court, Section "B", since what year?
A. I was there 18 years.
Q. That would be 1936.
A. 1936.
Q. You understand we are in the process of filing Motion to Quash the indictment on the basis no negro e served on the grand jury for the Parish of Orleans?
A. I understand.
Q. You have testified before and we are going throu the formality. Judge, during the period of your judgesh have you ever selected a negro to serve on any of your gra juries?
A. Not to my knowledge.
[fol. 101] Let me ask you this judge. You are submit 75 names from the jury commission?
A. Correct.
Q. After you received the 75 names, tell us how you m the final selection of 12?

By Mr. Haggerty:

I object.

By the Court:

Objection overruled.

The reason I am overruling the objection, it appears me in case of conviction in the case it would eventually to the Supreme Court of the United States.

A. As a rule I have my stenographer send out lett in advance of the selection of the grand jury, because I h spent most of my life across the river and I don't kn the people some of the judges may know in the City

New Orleans. So, for that reason, I have a letter sent out to each of the prospective jurors and give him an appointment to come in and I handle twenty or twenty-five at a time. It is a question of education, business experience, to try to advise myself of the ability of the men selected by the Jury Commission, drawn by the Jury Commission, from which I am to take 12 under the law, in my opinion best qualified to serve. After doing that I always tell the man before I question him that he has been drawn as a prospective grand juror and would he object to serving—there is no use in going into it if he says no, and I go into the qualifications of the grand jury. Having at my disposal the ability of the entire grand jury list I proceed to pick out 12 who in my opinion are qualified to serve as grand jurors.

By Mr. Garon:

Q. Some of the things you look for in qualifying are what?

A. Education, experience, business ability, the man's knowledge of the city as a citizen. I try, as the law says I have a right to do, to pick out the best men to serve as grand jurors.

[fol. 102] Q. While you have not selected any negro to serve on your grand jury while a judge for eighteen years, you do know there were negroes on the venire submitted to you?

A. I know at times, and then I know there was 6, 8 or 10 negroes on it, but up to the last couple of times I picked a grand jury ninety-nine and nine tenths per cent were unqualified. In recent years we were getting a few educated men though.

Q. You mean the last two, three or four years?

A. Yes.

Q. During those two, three or four years, have you selected a grand jury?

A. I have, within the last two years.

Q. Were there negroes on that grand jury?

A. Yes, positively in that panel.

Q. In that panel of 75 names. And of course you did not select any of those negroes?

A. No. We can't select them all, we can only select 12. I had a run-in with a very well educated lady, Mrs. Adler,

who was anxious to serve, but I thought there was men better qualified and I had to pass her up, like I do a lot of men who are qualified, but I can only take 12.

Q. It has been testified elsewhere that you were familiar with a man by the name of Walker,——

A. I knew Walker.

Q. —who did serve on the grand jury of judge Charbonnet.

A. And he served on the petty jury in my court.

Q. You know him individually?

A. Yes, I know him.

Q. It has been testified elsewhere that he looked more nearly Caucasian than negro.

A. Yes.

Q. Is he living today?

A. Yes.

Q. And he could be very easily mistaken for a white person?

A. I had him on my jury and didn't know he wasn't a [fol. 103] white man until this came up about the grand jury. That's when I learned he was a negro.

By Mr. Garon:

That's all, Judge.

By Mr. Haggerty:

I have no questions.

Judge Frank T. Echezabal, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. Would you state your name for the record?

A. Frank T. Echezabal, Judge of Section "D" of the Criminal District Court for the Parish of Orleans.

Q. How long have you served as judge of the Criminal District Court of the Parish of Orleans?

A. Since October 1921.

Q. Without interruption?

A. Uninterrupted. I have been re-elected each time. This is my fourth term I am finishing now.

Q. Since the beginning of your term of office, is it correct to say that before Section "F" was added to the Criminal District Court of the Parish of Orleans, that you selected a grand jury every two and a half years?

A. Whether it happened every two and a half years or not I haven't computed it, but each time it became my turn to select a grand jury I have done so.

Q. Isn't it true it follows alphabetical order and true a grand jury serves each six months or two each year?

A. That's right. In one instance in my division I selected two grand juries in one year because I dismissed the first grand jury that I had selected for that year and then selected another.

Q. Have you ever selected a negro in any of your grand juries?

A. I have not.

[fol. 104] Q. Would you tell us Judge Echezabal, if you know of your own knowledge, of any negro ever serving on a grand jury for the Parish of Orleans?

A. You mean my division.

Q. Any division, grand jury only.

A. Not my division. I could not state from personal knowledge.

Q. That's all I want, from personal knowledge.

A. I don't know sir, from personal knowledge.

Q. Would you tell us your method of selecting the 12 grand jurors that eventually serve on the grand jury?

A. Yes. I receive a list of 75 names which have been drawn, as I assume, lawfully out of the jury wheel by the Jury Commission of the Parish of Orleans, and I select 12 from that list.

Q. Do you send out letters or interview any of the 75 in advance of the selection?

A. Any?

Q. Any.

A. I will not say I have not interviewed any, but my method of selection is this generally. The lists I have received within the past several years contained data which is very informative and which I have considered very help-

ful in selecting a grand jury. The list, as I remember, contains the phone numbers of the prospective jurors, their occupations, the history of their service both as petty and as grand jurors, and from that list I select the 12. Many of those whom I select are known by me, if not personally, by reputation, and from that list I select my 12.

Q. In other words, you have at your disposal prior to selection or consider prior to selection, the names of prospective grand jurors, telephone numbers, residence, occupation and busines they are employed in?

A. In many cases.

Q. It is frequently your policy to have chosen the 12 without interview?

[fol. 105] A. Yes. Generally, I would say that is correct, and may I add this: that the list makes no reference to race or religious creed.

Q. Would you state your age for the record?

A. Seventy-seven.

Q. And those seventy-seven years have been spent in the Parish of Orleans?

A. I was born in the City of New Orleans and I have never lived anywhere else.

Q. I take it you are generally familiar with the streets?

A. With the streets of the city?

Q. Yes, sir.

A. Fairly well, I would say.

Q. And the neighborhood?

A. You mean a particular neighborhood?

Q. Generally familiar.

A. I would say that.

Q. Getting to the selection of the grand jury that indicted this defendant, which was the Hartson grand jury which served from March 1, 1954, for a period of six months. Would you tell us Judge Echezabal, the manner of selecting those 12 gentlemen?

A. The same manner I selected all others as I have already stated.

Q. Did you interview any of those twelve?

A. Personally? Well, I can't recall whether I did or not.

Q. Do you know since 1936 negroes have been submitted to you on your venire list?

A. Well, I don't know for this reason. That on the

day I select my grand jury, which is the first Monday of the month, the grand jury serves from the first Monday of one month to the first Monday of the ensuing six months, and on the same day I enroll my petty jury, and I cannot state which of the men and ladies standing in the courtroom have been summoned for petty jury service and grand jury service, but on all occasions I would say that there were [fol. 106] negroes in the courtroom and to repeat, whether there for or summoned as grand jurors or petty jurors, sir, I don't know.

Q. But you are not positive, you don't know whether there were any negroes on the list of 75 in the last grand jury you selected.

A. I don't know, because as I have said, they come in and intermingle in the courtroom, probably 150 and sometimes less, have been summoned as petty jurors, and 75 on the grand jury, and sit indistinguishable in the courtroom. Whether negroes I have seen in my courtroom were summoned as grand jurors or petty jurors, I don't know.

Q. But I do understand from your testimony, you have not interviewed any negroes for the grand jury?

A. Nor white persons either. I may have one or two.

Q. But in this particular grand jury?

A. I can't say whether I did or not.

Q. No negroes?

A. No. But when I select them from my list I select those whom I believe are best qualified to serve on the grand jury and when I select them I don't know whether they are negroes or persons of the Caucasian race. I make no distinction sir. I would not exclude from my grand jury merely on account of race. I would not and I have never done it.

Q. Of the 12 you selected or the 12 you selected in the last grand jury, were men you knew about prior to selecting them?

A. Positively.

Q. Prior to impanelling them you knew a great deal about those gentlemen?

A. Yes.

Q. What was guiding you in checking as to qualification?

A. Good character, citizenship, availability and education to serve as grand jurors, because there are some men although they have a very good educational background, on

account of temperament are not qualified to act either a petty or grand jurors.

[fol. 107] Q. Do your minutes for March 1, 1954 reflec the manner of selecting the grand jury?

A. No, sir.

By Mr. Garon:

That's all.

Judge William J. O'Hara, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. State your name.

A. William J. O'Hara, Judge of Section "A", Criminal District Court, Parish of Orleans.

Q. For what period of time have you occupied that high office?

A. Since May 1932.

Q. Since May of 1932 and until 1936, do you know Judge O'Hara, whether negroes were supplied to the judges of the Criminal District Court for the Parish of Orleans, by the Jury Commission?

A. They were not. I am not sure about the exact time but it was sometime after I became a judge that the Jury Commission began putting colored names in the wheel.

By the Court:

Have you any date that would have any effect on this case.

By Mr. Garon:

I think that does have effect. I am trying to bring it up to date.

By Mr. Garon:

Q. Since 1936 to the present time, during which time you served as judge of Section "A", has the Jury Commission

supplied 75 names to the judges and has there been negroes on those panels?

A. Well, I would say yes.

Q. Have you ever selected a negro to serve on any of your grand juries?

A. No.

[fol. 108] Q. Do you have any personal knowledge or in your personal knowledge, do you know of any negro who ever served on a grand jury for the Parish of Orleans?

A. No. The only instance I know of is the case of a man by the name of Walker, I understand his name is, but I think Platt mentioned that.

Q. Prior to the last grand jury you selected, would you tell us the manner in which you selected your grand jury?

By Mr. Haggerty:

Could I state the reason for my objection. I understand this may ultimately go to the United States Supreme Court——

By the Court:

I will overrule the objection. I will let him answer.

By Mr. Garon:

Q. I am dividing my question into two. Prior to the selection of your last grand jury, what was the manner in which you selected the eventual 12 men who served on your grand jury since 1932?

A. I sent each one of the men whose name appeared on the venire list a letter and asked him to call at the court for interview some week or so before I had to make the selection, and then I interviewed the men and found out whether or not they would be available for jury service, whether they had any objection to serving or any reason to offer why they could not serve, and from that interview find out who I could make the selection from, and then after I had gone through the list then I would phone these men and tell them I had decided to select them for the grand jury and for them to appear on the first day of the term.

Q. What were the considerations that eventually caused you to pick the 12 men, what were you looking for?

A. Well, I was looking for the most responsible citizen.

Q. Would you break that down for us judge?

A. Prominence of the man, reputation in the community, solidarity as a citizen, how much confidence the public would have in these men I had selected as jurors. In other words, I was selecting for the public and I wanted to select [fol. 109] what I thought the public had confidence in.

Q. Of the 75 names what was the average of negroes in that panel?

A. Well, I would say on an average that would run from about 7 to 9 or 10, maybe 6 sometimes, but one time there was 9. I think it would run from a low of 6 to a high of 9 or 10.

Q. In other words, you interviewed as many of the 75 as you possibly could. You were comparing negroes as to prominence in the community with the remaining sixty some odd white?

A. Prior to the last grand jury I selected, yes.

Q. Did you change your method of selection of the grand jury you had used since 1932 on the last grand jury?

A. On the last grand jury I did, yes.

Q. Would you tell us?

A. Although I didn't select any colored people on the last grand jury, I did think I should consider the colored man, one colored man against the other colored man rather than one colored man against a white man.

Q. Do you feel, it is assumed by your answer to the last question, but I would like to ask you whether you feel the selection of the grand jury since 1932 and up to the last grand jury was an improper method?

By Mr. Haggerty:

I object because it calls on the witness for an opinion.

By the Court:

Objection sustained.

By Mr. Garon:

Reserve a bill.

By Mr. Garon:

Q. Answer my last question if you will, Judge O'Hara. Did you prepare a judgment in the case of State of Louisi-

ana vs Alfred Dowels which forms part of that record, which is on the same type motion to quash, number 139-324, Criminal District Court for the Parish of Orleans, arising out of a case in Section "A"?

[fol. 110] By Mr. Haggerty:

I object to the question because it seeks to inject another case.

By the Court:

Objectic stained.

By Mr. Garon:

Reserve a bill of exemption and ask the record be made part of the bill.

By the Court:

Unless you can show the Judge was prejudiced.

By Mr. Garon:

Oh, no.

By Mr. Garon:

Would you permit me to perpetuate my bill?

By the Court:

Yes, sir.

By Mr. Garon:

Q. Did you, in State of Louisiana vs. Alfred Dowles, 139-324, Section "A", in a motion to quash the indictment sustain that motion, arising out of an attack on the grand jury in Section "F" of this Criminal District Court?

A. Yes.

Q. Did you prepare reasons for judgment in that motion to quash?

A. I think the record will speak for itself in the Dowels case.

By Mr. Garon:

In connection with the testimony of Judge O'Hara, I would like to offer in evidence the reasons for judgment in the Alfred Dowels case.

By the Court:

Maybe Judge O'Hara doesn't agree with me. I am not going to permit you to introduce any other record in the case showing constitutionality.

I will sustain the objection of the state to introducing any other case.

[fol. 111] Judge J. Bernard Cocke, called as witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Give us your name.

A. J. Bernard Cocke, Judge of the Criminal District Court, Section "E".

Q. How long have been a judge of the Criminal District Court?

A. Since November 1944.

Q. Prior to that time have you ever served in any official capacity in the Parish of Orleans? Other than your judgeship.

A. I was District Attorney from May 1940 to November 1944. Prior to that I had been Assistant District Attorney from May 1925-July I believe, 1925, to 1935.

Q. In your long experience have you ever known of any negro serving on a grand jury?

A. I have never known of a member of the negro race serving on a grand jury except in one instance.

Q. In that instance, do you recall the man's name that served?

A. I don't recall the man's name.

Q. If I mentioned Walker, would that refresh your memory?

A. I believe that is the man.

Q. What position did you occupy at the time Walker was selected on the grand jury?

A. My recollection is District Attorney.

Q. Would that be Judge Charbonnet?

A. That is correct.

Q. Now tha we have mentioned the individual and refreshed your memory as to the name, do you visualize that individual?

A. Definitely.

Q. Would you say Judge Cocke, he appeared to be more Caucasian than negro?

A. I will put it this way. I would not have accepted him on face value as being a member of the negro race, but once there was some question about it, then I might have [fol. 112] re-evaluate my conception of it.

Q. Then it would be fair to say Judge Cocke, from your knowledge bearing upon this incident, Judge Charbonnet was unaware he was a negro?

A. Of course I have no way of knowing what prompted Judge Charbonnet at the time of appointment, but I know thereafter.

Q. Tell us what occurred thereafter.

A. Walker came into my office and asserted that he was a negro, that he did not pose as a white man, and that he was fearful that Judge Charbonnet believing he was white appointed him on the grand jury, and that he felt reluctant to serve if he might be a failure by serving as Caucasian or member of the white race, and he believed—at least he stated to me, Judge Charbonnet assumed he was a member of the white race and that was the reason why he appointed him. That he was willing and anxious to serve but he preferred not to be in any way hurt or offended by serving with other persons of the white race. My advice to him was to stand pat, I would talk to Judge Charbonnet, which I did, and Judge Charbonnet followed by advice, he just simply let status quo remain. So, I then communicated that thought to Walker and he remained on the grand jury, that I thought it was best the matter not be pressed any further, he was on the grand jury, he had a right to be on the grand jury, and on one was going to question the matter unless he himself made the matter something others might

question. So, he remained on the panel throughout and sat throughout the six months' period.

Q. Isn't it a fact when you mentioned this fact to Judge Charbonnet he was surprised Walker was a negro?

A. Not only was he surprised, so was I. Nevertheless he continued to serve.

Q. Since 1944, have you ever selected a negro on any of your grand juries?

A. I have not.

Q. As I understand it Judge Cocke, 75 names are submitted to you by the Jury Commission?

[fol. 113] A. That's correct.

Q. Do you interview all 75 on the jury venire each grand jury term?

A. No, I do not.

Q. You take a sample of the 75, say 20 or 30 names from whom you eventually select the 12 who eventually serve?

A. Suppose you let me put it my way.

Q. Very well.

A. There is submitted to me by the Jury Commissioners 75 names. I heard Judge Echezabal testify and though not quite as long in public service as the Judge, nevertheless I believe I know some people in this community too. The manner in which the list is submitted to us gives us some help in determining what type, what kind of man is available. I use a (copy illegible) at least 20 names of persons whose (copy illegible) list, either that I know personally (copy illegible) knowledge of their identity in the community, and I usually send out about 20 letters in advance of selection with the idea of talking to the gentlemen who may be asked to serve on the grand jury. Having 12 to select necessarily, I want to try to select 12 men out of 20 that I invited to come to my chambers and discuss their qualifications and availability. So therefore, I usually see almost all 20 of them and I have seen almost all 20 since November 1944 through the present. At times I meet with the men's unavailability, therefore, I am constrained as I go along, to find that I haven't got all 20 as being available and I have found, on at least two occasions, that I have been one or two short, and by then I reached the instant of actually selecting the grand jury and I may have to select one or two men who I have never had an opportunity to talk to.

Q. Is it correct to say that when you get your list of 75 names it informs you of the fact a man might be in the Whitney Bank as a janitor?

A. That is true.

[fol. 114] Q. That of course gives you some idea from whom to select your twenty?

A. That's correct.

Q. Would you be in position to know since 1944, the average number of negroes on your panel of 75?

A. No, I can't say that.

Q. Would you know since 1944, if you ever had occasion to send out a letter to a negro?

A. No.

Q. You have not sent out a letter to a negro?

A. I don't know from the list whether he is a negro or not. My answer is, I send out 20 letters, that I interview, that if I have not received a response to my letter to a man it would be obvious to me he was a member of the colored race.

Q. That would be true in all your grand juries?

A. Yes.

By Mr. Garon:

That's all.

STIPULATION AS TO TESTIMONY OF E. A. HAGGERTY

By Mr. Garon:

Mr. E. A. Haggerty, has been called as a defense witness, he has been associated with the Criminal District Court thirty-five years, has been Clerk of the Criminal District Court thirty-five years, and in his memory no negro has ever served on a grand jury with the exception of this man Walker, and he doesn't know that of his own knowledge.

By Mr. Haggerty:

I stipulate that.

OFFERS IN EVIDENCE

By Mr. Garon:

Let me call Judge Niels F. Hertz to the stand, and I understand the state will take the position it is not proper to testify in a proceeding he is called upon to decide.

By Mr. Haggerty:

[fol. 115] The court could in its reasons for judgment, whatever that judgment is, could then in that instance detail his manner of selecting the grand jury, which is not the jury that indicted.

By Mr. Garon:

Reserve a bill.

By Mr. Garon:

I would like to offer in evidence the entire record of the Criminal District Court, number 139-324, State of Louisiana vs. Alfred Dowels, including the reasons for judgment on the Motion to Quash the indictment.

By the court:

The offer is not allowed.

By Mr. Garon:

Reserve a bill.

By Mr. Garon:

I offer in evidence the minutes of Judge Echezabal for March 1, 1954, at which time he selected the 12 men that served as grand jurors.

By the Court:

That's all right.

By Mr. Garon:

I offer in evidence the grand jury book in possession of the Jury Commission office, showing the 75 names.

By the Court:

I will allow you to incorporate that in the record if it is available.

[fol. 116] [File endorsement omitted]

DEFENSE EXHIBIT D-1 FILED IN CONNECTION WITH TESTIMONY OF MACK A. DYER ON MOTION TO QUASH INDICTMENT

"September 16, 1954.

MR. DYER:

Below I give you, for the past four years, the total registration, as well as the white and colored, according to our records.

	Total	White	Colored
December 1951	218,559	193,446	25,113
October 1952	232,115	204,110	28,005
October 1953	181,840	159,082	22,758
February 1954	196,274	171,444	24,830

Marcel J. Brunet, Chief Deputy."

[fol. 117] REGISTRATIONS IN PUBLIC SECONDARY SCHOOLS
(Based on Statistical Reports and Other Data)

High Schools

	Session	White	Negro	Total	%W	%N
	1923-24	3,660	509	4,169	88	12
	1924-25	3,997	454	4,451	90	10
	1925-26	4,004	694	4,698	85	15
	1926-27	4,197	869	5,066	83	17
	1927-28	4,637	902	5,539	84	16
8th Grade in	1928-29	5,329	1,226	6,555	81	19
Elementary	1929-30	5,832	1,372	7,204	81	19
	1930-31	8,781	2,182	10,963	80	20
	1931-32	9,660	2,425	12,085	80	20
	1932-33	10,599	2,578	13,177	80	20
	1933-34	11,485	2,811	14,296	80	20
	1934-35	11,837	3,286	15,123	78	22
	1935-36	12,185	3,682	15,867	77	23
	1936-37	12,361	4,006	16,367	76	24
	1937-38	12,272	4,111	16,383	75	25
	1938-39	12,395	4,274	16,669	74	26
	1939-40	13,169	4,568	17,737	74	26
	1940-41	13,405	4,713	18,118	74	26
	1941-42	13,059	4,640	17,699	74	26
	1942-43	11,187	4,387	15,574	72	28
8th Grade in High	1943-44	10,406	3,959	14,365	72	28
8th Grade in	1944-45	8,209	2,957	11,166	74	26
Elementary	1945-46	7,080	2,725	9,805	72	28
	1946-47	6,860	2,856	9,716	71	29
	1947-48	6,256	3,096	9,352	67	33
	1948-49	8,885	3,998	12,883	69	31
	1949-50	8,692	5,006	13,698	64	36
	1950-51	8,179	5,599	13,778	59	41
8-4 Plan	1951-52	7,754	5,653	13,407	58	42
6-3-3 Plan	1952-53	10,429	6,984	17,413	60	40
	1953-54	12,422	7,243	19,665	63	37

(Signed) Ernest O. Becker, Assistant Superintendent.

[fol. 118] NUMBERS OF NEGRO SCHOOLS

(Taken from Old Directories)

1910–1911	11 Elementary Schools
1920–1921	1 High School 15 Elementary Schools
1930–1931	1 Normal 2 High Schools 1 Junior High School 21 Elementary Schools
1952–1953	4 High Schools 1 Junior-Senior High School 1 Junior High School 29 Elementary Schools
1954–1955	5 High Schools 1 Junior-Senior High School 3 Junior High Schools 30 Elementary Schools

(Signed) Ernest O. Becker, Assistant Superintendent.

[fol. 119] DEFENSE EXHIBIT OFFERED IN CONNECTION WITH THE TESTIMONY OF MR. ERNEST O. BECKER, IN CONNECTION WITH THE MOTION TO QUASH THE INDICTMENT

Registrations in Public Elementary Schools

(Based on Statistical Reports and Other Data)

		Elementary Schools				
	Session	White	Negro	Total	%W	%N
	1923-24	37,594	13,532	51,126	74	26
	1924-25	37,122	13,981	51,103	73	27
	1925-26	37,517	13,728	51,245	73	27
	1926-27	37,922	14,809	52,731	72	28
	1927-28	38,577	15,875	54,452	71	29
8th Grade in	1928-29	39,334	16,232	55,566	71	29
Elementary	1929-30	38,770	16,833	55,603	70	30
	1930-31	38,562	15,614	54,176	71	29
	1931-32	39,039	17,784	56,823	69	31
	1932-33	39,635	18,880	58,515	68	32
	1933-34	39,614	20,184	59,798	66	34
	1934-35	39,216	21,120	60,336	65	35
	1935-36	38,386	21,338	59,724	64	36
	1936-37	36,773	21,686	58,459	63	37
	1937-38	34,357	20,932	55,289	62	38
	1938-39	32,841	21,224	54,065	61	39
	1939-40	31,599	21,053	52,652	60	40
	1940-41	29,429	21,022	50,451	58	42
	1941-42	27,824	20,612	48,436	57	43
	1942-43	27,768	20,181	47,949	58	42
8th Grade in High	1943-44	26,828	19,598	46,426	58	42
8th Grade in	1944-45	28,593	19,835	48,428	59	41
Elementary	1945-46	27,730	20,607	48,337	57	43
	1946-47	26,692	21,318	48,010	56	44
	1947-48	25,761	22,069	47,830	54	46
	1948-49	25,643	22,985	48,628	53	47
	1949-50	26,277	24,035	50,312	52	48
	1950-51	26,411	25,141	51,552	51	49
8-4 Plan	1951-52	28,298	25,896	54,194	52	48
6-3-3 Plan	1952-53	27,506	26,008	53,514	51	49
	1953-54	26,900	26,129	53,029	51	49

(Signed) Ernest O. Becker, Assistant Superintendent.

[fol. 120] IN SUPREME COURT OF LOUISIANA

No. 43,106

STATE OF LOUISIANA

VS.

FREDDIE EUBANKS

On Appeal from Section "F" of the Criminal District Court for the Parish of Orleans, State of Louisiana

Honorable Niels F. Hertz, Judge

OPINION—February 25, 1957

MOISE, Justice:

The defendant was tried, convicted and sentenced to death for the murder of Mrs. Mable Clarkson, a white woman, on May 24, 1954. He appeals to this Court from the conviction and sentence.

Thirty-two Bills of Exceptions were perfected during the trial, but approximately one-half this number are presented for consideration on this appeal.

Bills of Exceptions One through Six (consolidated on this appeal) were taken to the refusal of the trial court to quash the indictment returned against the accused, on the ground that the Grand Jury which returned the true bill of indictment against the accused was unconstitutionally drawn by Honorable Frank T. Echezabal, Judge of Section "D" of the Criminal District Court for the Parish of Orleans. It is alleged that negroes were unlawfully, systematically and unconstitutionally excluded from the all white Grand Jury which indicted the defendant, a negro, contrary to Article 1, Section 2 of the Fourteenth Amendment to the Constitution of the United States.

The method of selecting the Grand Jury in Louisiana is set forth in R.S. 15:191, 15:194 and 15:196. They provide [fol. 121] for the appointment of a Jury Commission, composed of three members, by the Governor of the State. This Commission selects a list of names, not less than seven hundred and fifty, from all sources available—telephone

directory, recommendations of corporations, city directory, recommendations of business executives—and places them in a general wheel. The record discloses that a sincere effort is made to include the names of negroes in this list. Twice a year the Commission draws seven-five names from the wheel and sends them to the Judge of the Criminal District Court whose turn it is to select a Grand Jury. There are eight divisions of the Criminal District Court for the Parish of Orleans, and each Judge has his turn in rotation to select a Grand Jury. The seventy-five names are indiscriminately drawn from the wheel as are a larger number of names for the Petit Juries. Each name bears information as to the person's occupation and address, but no mention is made as to race or color. In the matter herein involved, the list of seventy-five names contained the names of six negroes.

The Judge selecting the Grand Jury is empowered to use his own discretion in selecting the twelve members. From the evidence of record, we find that the majority of the Judges interviewed a large number of the seventy-five persons listed before making a selection of a Grand Jury. Judge Frank T. Echezabal, who selected this contested Grand Jury, testified that he had been a Judge of the Criminal District Court for the Parish of Orleans since 1921 and stated:

> "* * * I select those whom I believe are best qualified to serve on the grand jury and when I select them I don't know whether they are negroes or persons of the Caucasian race. I make no distinction sir. I would not exclude from my grand jury merely on account of race. I would not and I have never done it."

With respect to qualifications, Judge Echezabal said he considered—

> [fol. 122] "Good character, citizenship, availability and education to serve as grand jurors, because there are some men although they have a very good educational background, on account of temperament are not qualified to act either as petty or grand jurors."

The record undeniably discloses that in selecting the instant Grand Jury composed of all white persons, which

served six months and indicted many persons other tha. the defendant, white and colored, Judge Echezabal did not abuse his discretion when he chose those he thought most qualified to serve and did not include any of the six negroes which had been presented to him. State v. Dorsey, 207 La. 928, 22 So. (2d) 272.

The record discloses no systematic exclusion of negroes from the Grand Jury. The only reason negroes were not selected to serve was that the Judge selecting the Grand Jury thought that the white persons selected were better qualified.

In the recent case of Reece v. State of Georgia, 349 U. S. 944, 75 S. Ct. 877; 350 U.S. 85, 76 S. Ct. 167, 211 Ga. 339, 85 S.E. (2d) 773, 76 S. Ct. 297, the United States Supreme Court laid the following predicate:

> "This Court over the past 50 years has adhered to the view that valid grand jury selection is a constitutionally protected right. The indictment of a defendant by a grand jury from which members of his race have been systematically excluded is a denial of his right to equal protection of the laws. Patton v. State of Mississippi, 332 U.S. 463, 68 S. Ct. 184, 92 L.Ed. 76; Norris v. State of Alabama, 294 U.S. 587, 55 S. Ct. 579, 79 L.Ed. 1074; Rogers v. State of Alabama, 192 U.S. 226, 24 S. Ct. 257, 48 L.Ed. 417; Carter v. State of Texas, 177 U.S. 442, 20 S. Ct. 687, 44 L.Ed. 839. Where no opportunity to challenge the grand jury selection has been afforded a defendant, his right may be asserted by a plea in abatement or a motion to quash before arraignment, United States v. Gale, 109 U.S. 65, 72, 3 S. Ct. 1, 6, 27 L.Ed. 857. Of course, if such a motion is controverted it must be supported by evidence. Patton v. State of Mississippi, supra; Martin v. State of Texas, 200 U.S. 316, 26 S. Ct. 338, 50 L.Ed. 497."

We believe that defendant's motion to quash has been sufficiently controverted by evidence which proves his statements to be false. The pattern of proof was established [fol. 123] in the case of Norris v. State of Alabama, 294 U.S. 587, 55 S. Ct. 579. There the United States Supreme Court held that the Court could not accept the mere statement of officials as to the performance of their duties but

must actually examine the records to determine whether there had been a deliberate exclusion of negroes from jury service.

The record in this case shows that the negro population in the Parish of Orleans is approximately 30%. The evidence also shows that in selecting the 750 names to be placed in the general wheel, the Jury Commissioners made a deliberate attempt to include the names of negroes, without proportionately limiting their number. Walter E. Douglas, Jr., Jury Commissioner from 1942 through 1948, stated that he attempted to secure names through the Housing Authority and subpoenaed many negroes. His successors, Dudley Desmare and V. G. Warner, followed the same practice. The facts show that the names of many negroes have been in the general wheel at all times.

The case of State v. Dorsey, 207 La. 928, 22 So. (2d) 272—relying on the case of Commonwealth of Virginia v. Rives, 100 U.S. 313, 322, 25 L.Ed. 667—held that a mixed jury in a particular case is not essential to the equal protection of the laws under the Fourteenth Amendment to the United States Constitution. We stated:

> "* * * defendant complains that there was no Negro on the grand jury that found the indictment, and alleges that there has not been a Negro on a grand jury in the Parish of Orleans for a period of 27 years. Under the facts in this case, this complaint simply means that defendant is claiming the right to have a jury composed in part of members of his own race. This we do not understand to be the law. So to hold under the facts in this case would be tantamount to saying that it was the mandatory duty of the district judge to place on the grand jury which found the indictment the member of the colored race who was on the jury panel."

Bill of Exceptions No. 2, incorporated herein, was taken to the refusal of the trial judge to permit the Clerk of the United States District Court to testify as to the method of selecting the Federal Grand Jury.

[fol. 124] We believe that the trial judge was correct, as only the method of selecting the Orleans Parish Grand Jury, a Louisiana State Grand Jury, was involved.

Bill of Exceptions No. Three was to the same effect.

Bill of Exceptions No. Four was taken to the refusal o the trial judge to permit Honorable William J. O'Hara, Judge of the Criminal District Court for the Parish o Orleans, to answer the following question:

> "Do you feel, (it is assumed by your answer to th last question), but I would like to ask you whethe you feel the selection of the Grand Jury since 193 and up to the last Grand Jury was an improp method?"

The trial judge was correct. The instant Grand Jur was under consideration, and the alleged denial of equa protection of the laws depended upon the facts of thi particular case. State v. Green, 221 La. 713, 60 So. (2d 208.

Bill of Exceptions No. Five is to the same effect.

Bill of Exceptions No. Six was taken to the refusal o the trial judge to testify as to his method of selecting grand jury. He was correct, because he could not act bot as a judge and as a witness.

Bills of Exceptions Nos. One through Six have been ad judged on the facts of the case, and, as stated above, w do not find that the judge abused his discretion in selectin the Grand Jury. Therefore, the bills are without merit.

Bill of Exceptions No. Seven was taken to the ruling o the trial court in admitting in evidence a picture of th deceased taken after the murder was committed. Counse contends that the defendant was prejudiced, because th picture was gruesome, inelegant and inflammatory.

[fol. 125] Relying on the case of State v. Sears, 220 La 103, 55 So.(2d) 881, the trial judge stated in his per curia that he permitted the picture to be introduced in evidence because, in his opinion, there was nothing gruesome o revolting about the picture.

The jury was considering the crime of murder, and th picture was that of the deceased after the commission o the crime. It was helpful to the State in presenting it evidence, and we do not find that it is of such a nature a to have prejudiced the jury. Under these circumstances there is no merit to the bill.

Bill of Exceptions No. Eleven was taken to the refusa of the trial judge to grant a mistrial after a State's wit

ness, Detective Stevens, on cross-examination, made the following response to the question of whether the name of another person had been mentioned:

> "No, sir, I believe I told you that name. I received a call from Mr. Hubert to the effect the defense in this case indicated Eubanks had an accomplice."

Defendant's counsel contends that Officer Stevens' remark had the effect of placing in the jurors' minds the thought that counsel believed his client guilty.

In his per curiam to this bill, the trial judge correctly stated:

> "I refused to order a mistrial because the witness on cross-examination by counsel for the defendant made the remark complained of on his own volition and was not detrimental to the cause of the defendant. However, I did instruct the petty jury to disregard the remark made by the witness as never having been made.
> "I see no harm or error in this bill."

The ruling in the case of State v. Martin, 193 La. 1036, 192 So. 694, to the effect that the trial for a criminal offense [fol. 126] cannot be defeated or nullified by the act of a witness in making a statement which he should not make and for which the prosecution is not responsible, is applicable to the present case. See, also, State of Louisiana v. Edgar Labat and Clifton Alton Poret, 226 La. 201, 75 So.(2d) 333; and, State v. Barbarian, 225 La. 89, 72 So.(2d) 306. The trial judge instructed the jury to disregard the testimony, and we cannot see that the defendant was prejudiced in any manner. There is no merit to the bill.

Bill of Exceptions No. Fourteen was reserved when the trial court sustained the State's objection to two questions propounded to Mr. Frank Valentinien, a witness for the defense. These questions related to the reasons a fellow employee of the defendant gave to his employer for quitting his job on the day of the crime. The testimony would have been hearsay, which is inadmissible in a criminal proceeding, except in certain instances not here involved. The court was, therefore, correct in sustaining the objection.

Bill of Exceptions No. Seventeen was reserved when the trial judge refused to give the jury the following charge:

> "Your defendant, herein, Freddie Eubanks, respectfully presents through his undersigned counsel, to this Honorable Court before the argument has begun, the following written charge, and respectfully requests that the same be given the Jury herein by this Honorable Court, to-wit:
>
> "If the evidence in this case that the negro male, Robert Taylor alias Geraldine, alias Gay Boy, alias Gloria Lopez, or that the negro male Henry Allain killed Mrs. Clarkson, or that a strange man whom she had invited to her room killed Mrs. Clarkson, combined with any other evidence in the case leaves you with a reasonable doubt that the defendant, Freddie Eubanks committed this crime, then the law makes it your duty to find the defendant, Freddie Eubanks, not guilty."

Bill of Exceptions No. Eighteen was reserved when the trial judge refused to give the following similar charge:

> [fol. 127] "If the evidence in this case that the negro male, Robert Taylor, alias Geraldine, alias Gay Boy, alias Gloria Lopez, killed Mrs. Clarkson without the aid and assistance of the defendant, Freddie Eubanks, combined with any other evidence in the case, leaves you with a reasonable doubt that the defendant Freddie Eubanks committed the crime, then the law makes it your duty to find the defendant not guilty."

We have carefully read the general charge of the trial judge to the jury, which is in writing and made a part of this transcript. It is an exhaustive statement of the law relative to the crime with which the defendant was charged, and it covers the matter referred to in the requested charges above quoted. The trial judge does not commit error in refusing to give special charges which are covered by his written general charge to the jury. State v. Sears, 220 La. 103, 55 So.(2d) 881; State v. Fuller, 218 La. 872, 51 So.(2d) 305; State v. Robinson, 221 La. 19, 58 So. (2d) 408; State v. Matassa, 222 La. 363, 62 So.(2d) 609.

There is no merit to Bills of Exceptions Nos. Seventeen and Eighteen.

Bills of Exceptions Nos. Nineteen and Twenty-One were taken when the trial judge refused to give a special charge to the jury relating to innocence and a special charge relating to circumstantial evidence. The matter was covered in the general charge, and there is, therefore, no merit to Bill of Exceptions No. Nineteen.

In refusing to give the requested charge with respect to circumstantial evidence, the trial judge stated that it did not apply to the facts of the case. A review of the testimony attached to the Bills of Exceptions and the written confession included in the transcript convinces us that the State was depending upon direct evidence to establish defendant's guilt and prove its case against him. Under these circumstances, the trial judge did not abuse his discretion in refusing to give the charge. State v. Gordon, 115 La. 571, 39 So. 625.

[fol. 128] Bill of Exceptions No. Twenty-Two was reserved when the trial judge refused to give the jury the following charge:

> "A legal presumption relieves him in whose favor it exists from the necessity of any proof; but it may none the less be destroyed by rebutting evidence, such is the presumption that evidence under the control of a party and not produced by him was not produced because it would not have aided him."

Counsel for the defendant contended that since the State had subpoenaed Mrs. S. K. Rose as a witness and did not call her to testify, it must be presumed that her testimony would not have aided the State in its case.

In refusing to give the charge, the trial judge stated in his per curiam that it was not applicable to the facts of the case.

Revised Statutes 15:390 provides:

> "The prosecution and the defense have each the right to present to the court, before the argument has begun, any written charge or charges, and request that the same be given. Except as otherwise provided herein, the judge must give every such requested charge that is wholly correct and wholly pertinent, unless the matter

contained in such charge have been already given, or unless such charge require qualification, limitation or explanation."

The charge requested would have required explanation and qualification, because the witness was called by the defense even though the State did not see fit to elicit her testimony. To draw an inference that the witness's testimoney would not have aided the party subpoenaing her, the particular circumstances must be examined. State v. Johnson, 151 La. 625, 92 So. 139. An examination of the testimony attached to the Bill discloses that the testimony elicited by defendant's counsel was not in aid of the State. There is also in the transcript a statement by the District Attorney that he was willing to admit the presumption. Under these circumstances, there was no prejudice to the defendant and the charge was not necessary for the jury's deliberation. Therefore, there is no merit to the Bill.

[fol. 129] Bill of Exceptions No. Twenty-Three was taken to the refusal of the trial judge to give the following charge to the jury:

"The Court charges you, gentlemen, that the flight of a suspect, or escape, taken alone, does not raise a legal presumption of his guilt, but, if proven, are merely facts in the case to be taken into consideration by you gentlemen in connection with all the other facts in the case in determining whether there is a reasonable doubt that the defendant, Freddie Eubanks committed the crime charged, under the theory that another person actually committed the alleged crime without the aiding and abetting of the said Freddie Eubanks, and that that other individual did flee, and/or escape, and has not to date been apprehended, if you believe these to be the facts."

The trial judge stated that the charge was not applicable to the facts of the case. The judge was correct in his ruling, because an examination of the testimony attached to the numerous bills shows no direct connection between an escaping party and the crime committed.

Bill of Exceptions No. Twenty-Five was reserved to the refusal of the trial judge to grant the defendant a mistrial

after the Court made the following statement to Detective Stevens:

> "You cannot assume a fact to be proved that has not been proved. There is no evidence in the record this man, you say, departed the city of New Orleans at all. He doesn't know that.
> "Do you?"
> "No, sir."

Counsel for the defendant contends that the remark of the trial judge was a comment on the evidence, contrary to Revised Statutes 15:384.

As we have previously stated, there was no connection made in the proof of this case between an escaping party and the crime committed. After examining the particular facts of this case, we cannot find that the defendant was [fol. 130] prejudiced by the remark of the presiding judge. Article 557 of the Criminal Code, Revised Statutes 15:557, provides:

> "No judgment shall be set aside, or a new trial granted by any appellate court of this state, in any criminal case, on the grounds of misdirection of the jury or the improper admission or rejection of evidence, or as to error of any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice, is prejudicial to the substantial violation of a constitutional or statutory right."

We do not find any violation of defendant's rights nor a miscarriage of justice, and there is, therefore, no merit to the bill. State of Louisiana v. Anthony Nicolosi, 228 La. 65, 81 So. (2d) 771.

Along with his plea of not guilty, the defendant entered a plea of not guilty by reason of insanity. During the course of the trial, Dr. C. S. Holbrook, a psychiatrist appointed by the court, was questioned as to whether an individual is normal, who commits a brutal crime as was com-

mitted on the deceased and then falls asleep. Dr. Holbrook was then asked the following hypothetical question:

> "Doctor, assuming the same situation, though not admitting anything of course, and assuming that the infliction of the wounds included multiple abrasions and contusions and lacerations of skin of the scalp, face, neck and hands, fracture of the nose and skull, lacerations and contusions of the brain, subdural and subarachnoid hemorrhage, stab wound of the right chest with penetration of the right upper lobe of the lung, hemothorax right, laceration of the posterior and anterior wall of the vagina, would your answer be the same.

The trial court sustained the State's objection to the question, and counsel for the defendant reserved Bill of Exceptions No. Thirty.

Ordinarily, experts are permitted to testify as to their opinions concerning matters within their specialized train- [fol. 131] ing. R.S. 15:464. Dr. Holbrook testified during the course of the trial to the effect that he thought that the defendant was mentally defective. His extensive testimony was before the jury, and the exclusion of an answer to one hypothetical question could not deprive the defendant of any constitutional right. The exclusion of testimony does not constitute reversible error, if the witness gave the same testimony at another time during the trial. State v. McCollough, 149 La. 1061, 90 So. 404; 184 La. 829, 167 So. 456.

Bills of Exceptions Nos. Thirty-One and Thirty-Two were reserved when the trial court denied a motion for a new trial and a motion in arrest of judgment. These bills present nothing new for our consideration and are, therefore, without merit. State of Louisiana v. Mills, 229 La. 758, 86 So. (2d) 895; State v. Weber, 221 La. 1093, 61 So. (2d) 883; State v. Roue, 222 La. 99, 62 So. (2d) 114; State v. Coffil, 222 La. 487, 62 So. (2d) 651.

For the reasons assigned, the conviction and sentence are affirmed.

[fol. 132] IN SUPREME COURT OF LOUISIANA

APPLICATION FOR REHEARING

To the Honorable the Supreme Court of the State of Louisiana:

Now into Court through undersigned Counsel comes Freddie Eubanks, appellant in the above numbered and entitled cause, and files herewith his application for rehearing upon the following allegations, to-wit:

1

A rehearing should be granted herein for the reason that the opinion and decree rendered in this cause by this Honorable Court on Monday, February 25, 1957 is erroneous and contrary to the law and the evidence, and prejudicial to the interest of petitioner, who respectfully represents:

2

The Court is in error in holding that the District Judge did not systematically discriminate against members of the negro race in selecting the all-white grand jury which indicted petitioner, and the Court is therefore in error in not finding the selection of the grand jury which indicted petitioner to be violative of the United States Constitution in denying equal protection of the laws to all persons alike. *Pierre versus Louisiana*, 306 U.S. 354, 59 S. Ct. 536 (1938); *State versus Nichols*, 216 La. 44 So. 2d 318 (1950), wherein Justice Moise felt "duty bound" to arrive at the same decision as the United States Supreme Court announced in the *Pierre* case, because "our United States Supreme Court is a judicial planet, whose orbit draws into its vortex the findings of all state Courts involving all federal constitutional questions which must be obeyed in order to maintain the law in its majesty of final decision."

The wide discretion of the Court permissible under the Louisiana law in selecting grand juries which has been exercised in Orleans Parish so as to proscribe the negro from grand jury service, has been exercised in violation of the United States Constitution. The discretion which Judge [fol. 133] Echezabal exercised in selecting the grand jury in question must be bound on all sides by the decision of

the United States Supreme Court in its interpretation of the United States Constitution. Judge Echezabal, just as all other Orleans Parish Judges, continually and consistantly has stepped outside of those bounds. *Smith versus Texas*, 311 U.S. 128, 61 S. Ct. 164, 85 L.Ed. 84 (1940).

Justice Clarke in *Reece versus Georgia*, 350 U.S. 85, 76 S. Ct. 33, 100 L.Ed. 1 (1955), has expressed the view of the United States Supreme Court in its appreciation of the protests of lower Court Judges who SAY that they have not discriminated against a class of people. "Mere assertions" says Justice Clarke, "of public officials, that there has been no discrimination will not suffice." Accordingly, when Judge Echezabal states, "* * * I select those whom I believe are best qualified to serve on the grand jury and when I select them I don't know whether they are negroes or persons of the Caucasian race. I make no distinction sir. I would not exclude from my grand jury merely on account of race. I would not and I have never done it," it is doubtful that in view of the total discrimination of negroes from Grand Jury Service in the history of Orleans Parish, that the United States Supreme Court will be sufficiently impressed as to allow this conviction to stand. In fact, in view of the long line of decisions beginning with the *Norris* case (*Norris versus Alabama*, 294 U.S. 587, 55 S. Ct. 579; L.Ed. 1074 1935), it is obvious that the United States Supreme Court will not countenance this practice and will reverse the decision of this Honorable Court.

We cannot ignore the mandate of the Court of final resort which is already established as the law of the land, and which has been expressed by Justice Higgins in *States versus Anderson*, a case arising in *Louisiana* on the identical facts, in which he stated that the practical administration of the Louisiana Statute has deprived negroes from participating in Grand Jury Service for thirty-one years in Allen Parish and that that fact alone is sufficient to declare that discrimination has existed.

3

The Court is in error in not recognizing the doctrine of *States versus Morgan*, 211 La. 572,30l So (2d) 434 (1947) relative to introduction of unnecessary gruesome photographs.

4

The Court is in error in not finding the remarks of State's witness, Detective Stevens, so prejudicial to the defendant as to cause a mistrial.

[fol. 134]

5

The Court is in error in finding no merit to the request for special charges filed by defendant, and in not seeing the prejudicial position in which the defendant was placed by being unable to develop the theory based on serious facts that Robert Taylor, alias Gloria Lopez, alias Geraldine, alias Gay Boy, was the true murder suspect in this case.

6

The Court is in error in not finding that the remark of the District Court was a comment on the evidence which was prejudicial to the defendant. It made no difference as to the nature of the comment because the comment itself invaded the sacred and exclusive prerogative of the jury which is prescribed and guaranteed by the Constitution. If the jury was impressed by the defendant's theory, its confidence in that theory was necessarily shaken by the comment of the Court, and if this be the case, what need then for a jury to hear the case if the Judge performs the function of the Jury?

7

The Court is in error in finding that the question posed to Dr. Holbrook which was not answered in view of the Judge's ruling was answered elsewhere during the examination of the doctor.

8

The Court is in error in denying a new trial for the defendant based upon the reversible error rampant throughout the trial, including the substantial violation of defendant's constitutional rights.

The premises considered, and for the reasons hereinabove set forth, a rehearing should be granted in this cause, and that, finally, the judgment of the District Court be avoided and reversed, and judgment be rendered in favor of petitioner herein, and for all general and equitable relief.

(Signed) Herbert J. Garon, 532 National Bank of Commerce Building, Attorney for Petitioner.

[fols. 135-138] IN SUPREME COURT OF THE STATE OF LOUISIANA

ORDER REFUSING APPLICATION FOR REHEARING—April 1, 1957

Court was duly opened, pursuant to adjournment. Present Their Honors: John B. Fournet, Chief Justice, Amos Lee Ponder, Joe B. Hamiter, Frank W. Hawthorne, E. Howard McCaleb, James D. Simon, Associate Justices, and Walter B. Hamlin, Justice ad hoc.

Action by the Court upon Applications for Rehearing

. . . . . .

Rehearings Were Refused in the Following Cases:

. . . . . .

43,106

STATE OF LOUISIANA

v.

FREDDIE EUBANKS

. . . . . .

[fol. 139] Clerk's Certificate to foregoing Transcript (omitted in printing).

[fol. 140] SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 550

FREDDIE EUBANKS, Petitioner,

vs.

STATE OF LOUISIANA

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI —October 14, 1957

On petition for writ of Certiorari to the Supreme Court of the State of Louisiana.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 550.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 550

FREDDIE EUBANKS, Petitioner

vs.

STATE OF LOUISIANA

STIPULATION TO REQUIRE CERTIFICATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—February 20, 1958

STATE OF LOUISIANA,
Through M. E. Culligan,
Assistant Attorney General,
Counsel for Respondent.

FREDDIE EUBANKS,
Through Herbert J. Garon,
532 National Bank of Commerce Bldg.,
New Orleans, Louisiana, and
LEOPOLD STAHL,
937 National Bank of Commerce Bldg.,
New Orleans, Louisiana,
Counsel for Petitioner.

Pursuant to United States Supreme Court Rule 36 (6), Petitioner, Freddie Eubanks, through his counsel, Herbert J. Garon and Leopold Stahl, and Respondent, the State of Louisiana, through its counsel, M. E. Culligan, Assistant Attorney General, do hereby stipulate that a record before the trial court in this cause, to-wit: reasons for judgment in the matter of State of Louisiana v. Alfred Dowels, No. 139-324 of the docket of the Criminal District Court for the Parish of Orleans, was offered in evidence by petitioner, then defendant, which was disallowed by the trial court; that a bill of exception was reserved by petitioner and perfected in the State Supreme Court (R. 37, 38, 98, 102); that in accordance with Louisiana Revised Statutes of 1950, Title 15, Section 459, which is hereinafter set forth in full, that it was not necessary for the clerk of the lower court to make a copy of the record, it being a part of the records belonging to the lower court wherein the trial was proceeding; that the said bill of exception pertaining to said record was considered by the State Supreme Court without the court requiring a copy of said record to be made by the

clerk of the lower court and the State Supreme Court affirmed the ruling of the lower court in disallowing the said record (R. 110); that this bill of exception pertains to the question raised by petitioner before the United States Supreme Court in his petition for writ of certiorari, and is therefore material to said petitioner; that by accident a certified copy of the said record was omitted by the undersigned who previously prepared a stipulation herein as to the designation of portions of the record to be printed;

Wherefore, the undersigned move by this stipulation to correct the said omission and to ask leave of court to require the certification of this additional part of the record, a certified copy of which is attached hereto and made a part hereof, to be printed in accordance with said Rule 36 (6) of the United States Supreme Court.

That the Louisiana law quoted above is set forth in Louisiana Revised Statutes of 1950, Title 15, Section 459, as follows:

> "Whenever, during the trial of any criminal case, either party may desire to offer in evidence any record, paper or document belonging to the files or records of the court in which the trial is proceeding, the presiding judge shall, at the request of such party, direct the clerk to produce such record, document or paper, in order that the same may be used in evidence; and it shall not be necessary for the clerk in any such case to make a copy of such record, document or paper."

Respectfully submitted.

M. E. Culligan,
M. E. Culligan,
Assistant Attorney General,
State of Louisiana,
Counsel for Respondent.

Herbert J. Garon,
Herbert J. Garon,
532 National Bank of Commerce Bldg.,
New Orleans, Louisiana,
Counsel for Petitioner.

Leopold Stahl,
Leopold Stahl,
937 National Bank of Commerce Bldg.,
New Orleans, Louisiana,
Counsel for Petitioner.

New Orleans, Louisiana, February 20, 1958.

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

No. 139-324—VIO. R. S. 14:42—Section "A"

STATE OF LOUISIANA

VS

ALFRED DOWELS

REASONS FOR JUDGMENT ON THE MOTION TO QUASH THE INDICTMENT

The defendant, a colored man, was indicted for the crime of rape of a white female. He pleads that the indictment should be quashed because of the intentional and systematic exclusion of negroes from grand juries in the Parish of Orleans, and the grand jury which returned the indictment herein.

The Supreme Court of the United States has established a criterion which it uses to determine whether there has been systematic and intentional exclusion of negroes from grand juries because of their color and the application of this criterion to the facts herein, this court respectfully believes, leads inevitably to the conclusion that the motion to quash must be sustained.

The negro population in Orleans has been large since its founding as a community. In 1930, 1940 and 1950, the negro segment of the population, according to United States census figures, has been some thirty-two percent, and this thirty-two per cent totalled 129,632, 149,023, 227,300, for these respective years.

No negro person, with one exception, which will be noted later, has ever served on a grand jury in Orleans in the memory of any living person.

The Supreme Court of the United States and of Louisiana have decreed that this combination of facts and events evidences systematic racial discrimination in violation of the Fourteenth Amendment to the Constitution of the United States.

As long as this combination of facts and events exists in Orleans negro defendants charged with a capital crime against a white victim and confronted with death in the electric chair, can be expected to interpose this plea, and their attorneys can be expected to do their utmost to make out the strongest possible case under this plea, and this combination of facts and events must, therefore, continue to be an obstruction to the course of justice in Orleans, in such cases, as long as it continues to exist.

There is no limit to the number of witnesses, the volume of testimony and the prolongation of hearings that are legally admissible under this plea. For example:

In Stat. vs. Pierre, 306 U. S. 354;
189 La. 764; 180 So., 630;
198 La. 619; 3 So. (2) 895.

Pierre, a colored man, was indicted for the murder of a white man in 1937 in St. John Parish. This plea was interposed and overruled in the trial court, which ruling was affirmed by our Supreme Court, and on appeal to the United States Supreme Court the plea was sustained and the conviction of Pierre was annulled.

The judgment of the Supreme Court of the United States was rendered in the latter part of 1939, more than two years after the indictment, and decreed that Pierre must be re-tried.

In 1940 when the State undertook to try Pierre for the second time, the plea was renewed and counsel for Pierre summoned for trial of the plea every registered voter in the Parish of St. John.

At this juncture the Pierre case became a threat to the public finances of the Parish and a new grand jury, composed in part of negroes was then impaneled and returned a new indictment against Pierre. Pierre was then tried by a petit jury of eleven whites and one negro and convicted and subsequently executed after a lapse of some four years from the date of the original indictment.

In State vs. Dorsey, 207 La. 928; 22 So. (2) 273, Dorsey, a colored man, was charged with the murder of a white man in Section "C" of this court.

Under a similar plea some eight or nine hundred witnesses were subpoenaed and testified on the hearing of the plea.

Recently and presently in Orleans are the following cases in which a negro is charged with the rape of a white female.

State vs. Cargile, Section "B"
State vs. Cargile, same defendant, Section "F"
State vs. Green, Section "B"
State vs. Dowels, the case at bar.

In the Cargile "B" case this plea was interposed and after a number of hearings the plea was overruled and Cargile was tried. The jury returned a verdict of guilty without capital punishment. Apparently Cargile was satisfied to escape with his life and took no appeal.

The District Attorney's office has stated its intention to try Cargile in Section "F". If such an attempt is made Cargile will make the same plea in Section "F" and involve Section "F" in a protracted hearings before his trial in Section "F" can be proceeded with.

In The Green Case, Section "B" is presently in the process of conducting hearings and receiving evidence under this plea. On one occasion Section "B" and this Section operated jointly to hear some of the witnesses in the Green case and this case.

In the case at bar efforts to prosecute the defendant herein have been met with this plea and the consequent hearings and taking of testimony involved.

No negro has ever served on a grand jury in Orleans within the memory of any living person except one instance and in that instance the negro was of a light complexion that made him easily mistaken for a white person. Prior to 1936, or thereabouts, to the judicial knowledge of this court, no negroes were placed in the jury wheel by the jury commissioners and consequently none were drawn or served as grand jurors before that year. So our consideration of the facts in this case must begin with 1936 when and since which date the jury commissioners have been placing the names of negroes in the jury wheel.

In connection with 1936, however, it might be observed that while no negroes served on the grand jury prior to 1936 because there were no negroes in the jury wheel, that no negroes have served on a grand jury since 1936 when there were negroes in the jury wheel; that the presence of negroes in the jury wheel has brought no change in the continuous omission of negroes from the grand jury in Orleans.

In Orleans the grand jury is empaneled under the following legal authority:

R. S. 15:196: "* * * and the said commissioners shall draw from the said wheel (jury wheel) the names of not less than seventy-five persons, which said names * * * shall be submitted by said commissioners to the presiding judge of that section of the Criminal District Court whose term it shall happen then to be, to empanel the incoming grand jury; and said judge, from the names thus submitted, shall select twelve persons who shall constitute the grand jury for the Parish of Orleans for the grand jury term next ensuing."

State vs. Dorsey, 207 La. 955, (5, 6):

"It is the duty of the district judge in the Parish of Orleans to select a grand jury of 12 from the grand jury panel of 75 names, and in doing so he should select the most competent and best qualified persons from the list submitted to him by the Jury Commission. In fact, it is his duty so to do, and in performing this duty he has a wide discretion."

Speaking of the Texas statutes with respect to jury selections, the United States Supreme Court in Smith vs. Texas, 311 U. S. 128, cited below:

"Here, the Texas statutory scheme is not itself unfair; it is capable of being carried out with no racial discrimination whatsoever. But by reason of the wide discretion permissible in the various steps in the plan, it is equally capably of being applied in such manner as practically to proscribe any group thought by the law administrators to be undesirable."

The United States Supreme Court in Patton v. State of Mississippi, 68 S. Ct. 184, decided December 8th, 1947:

"When a jury selection plan, whatever it is, operates in such way as always to result in the complete anl long-continued exclusion of any representative at all from a large group of negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand."

The Fourteenth Amendment to the Constitution of the United States:

"No State shall * * * deny to any person within its jurisdiction the equal protection of the laws."

Act of Congress pursuant to that constitutional authority; 18 Stat. 336, 8 U. S. C. para 44:

> "No citizen possession all other qualifications * * * shall be disqualified for services as grand or petit juror in any court of the United States or any State, on account of race, color, or previous condition of servitude."

Since the Fourteenth Amendment and the Act of Congress is a prohibition against the States in all of their governmental functions we know that said amendment and said Act must be read into and as part of every article of every state constitution; every enactment of a state legislature and every pronouncement of every court of last resort of every state, and as the decisions of our Supreme Court, cited hereinafter, will abundantly show, our Supreme Court never intended that the Dorsey pronouncement quoted above, or the law under which grand juries are selected in Orleans, should ever be read or considered other than conjunctively with said amendment and said Act of Congress and the decisions of the United States Supreme Court interpreting and applying said amendment and said Act to the administration of the jury selection laws of the various states.

In State vs. Anderson, 205 La. 710; 18 So. (2) 33, our Supreme Court cited, recited and used as its guide the following decisions of the United State Supreme Court:

Hill vs. Texas, 316 U. S. 400; 62 S. Ct. 1159; 86 L. Ed. 1559.

Pierre vs. Louisiana, 306 U. S. 354; 59 S. Ct. 536; 83 L. Ed. 757

Norris vs. Alabama, 294 U. S. 587; 55 S. Ct. 579; 79 L. Ed. 1074

Smith vs. Texas, 311 U. S. 128; 61 S. Ct. 164; 85 L. Ed. 85

State vs. Dorsey, cited above, was the next decision of our Supreme Court on the subject matter of race discrimination.

Upon the authority of the Dorsey case itself, it is respectfully stated, that the Dorsey case has no application to the case at bar. According to our Supreme Court the point in the Dorsey case was as follows: (We quote from Page 954 of the Louisiana citation):

> "Under the facts in this case, this complaint simply means that defendant is claiming the right to have a jury com-

posed in part of members of his own race. This we do not understand to be the law."

(Our Supreme Court granted Dorsey a new trial on another point and on his second trial Dorsey was convicted without capital punishment and took no appeal.)

Then came State vs. Perkins, 211 La. 998; 31 So. (2) 188:

"A legion of cases involving alleged racial discrimination in selection of grand and petit juries are to be found in the jurisprudence of the Supreme Court of the United States and this court. These adjudications have settled all legal problems here presented and they have been many times cited and discussed by us in kindred matters. State v. Gill, 186 La., 339, 172 So. 412; State v. White, 193 La. 775, 192 So. 345; State v. Dorsey, 207 La. 928, 22 So. (2) 273. Hence a comprehensive review of the authorities would be superfluous. Suffice it to say that the Supreme Court of the United States has declared in substance that equal protection of the law requires that a colored person shall be afforded an opportunity to have members of his race serve upon the gr[illegible]l and petit jury in cases involving his life or liberty and, therefore, any denial of this guarantee, either by a law which does not provide a fair mode of selection or by officers who systematically administer a valid law so as to accomplish gross inequalities, cannot be countenanced. See Hill v. State of Texas, 316 U. S. 400, 62 S. Ct. 1159, 86 L. Ed. 1559, and our comparatively recent decision in State vs. Anderson, 205 La. 710, 18 So. (2) 33, where a lengthy review of much of the jurisprudence is set forth. In every case, the basic question for determination is whether there has been a discrimination either by statute or by practice of the officers charged with administration of the law. And, as said by the Supreme Court of the United States in Smith v. State of Texas, 311 U. S. 128, 61 S. Ct. 164, 166, 85 L. Ed. 84: "If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand."

Following the Perkins case came State vs. Green, 60 So. (2) 208, Advance Sheets So. Rep. dated September 11th, 1952:

In the Green case there were three negroes on the grand jury which indicted Green and his counsel attempted to make

out a case of discrimination on the theory of inclusion of a token number of negroes for the purpose of disguising discrimination. This is not the case at bar.

The Green case also reiterates that portion of the Perkins case which declares:

> "Percentages may be of value in cases where no representation exists or where token representation has been given in keeping with a scheme to deny the equal protection of the laws."

It is worthy of note that our Supreme Court in the Perkins and Green cases says that population percentages may be of value in a case where there is no representation at all.

No representation at all on grand juries is the case at bar.

The defendant's contention in this case, among other things, is that the omission of negroes from the grand jury continuously for thirty years and more, and for the sixteen years that negroes have been placed in the jury wheel, considering the large negro population in the locality, and considering that many of them are legally qualified to serve on the grand jury, establishes a case of intentional and systematic exclusion of negroes from grand juries in the locality, in violation of the Fourteenth Amendment, according to the decisions of the United States Supreme Court, which declare that under the facts and circumstances stated above, that chance and accident alone does not explain the continuous omission of negroes from grand juries, hence the continuous omission of negroes must be the result of intentional and systematic exclusion of negroes from the grand juries in the locality; that there is nothing herein to differentiate the selection of the grand jury that returned the indictment herein from the continuous succession of grand juries from whose rosters negroes were consistently omitted.

As our Supreme Court stated in State vs. Perkins, supra, the law is well established. Our question, therefore, is what are the facts?

It has already been stated, among other things, that for more than thirty years, during sixteen of which negroes have been placed on grand jury venires, continuously and consistently, that no negro has ever served on a grand jury in Orleans, except in one instance that one negro served and that one negro could readily and easily be mistaken for a white man.

The proof is that this one colored grand juror, one R. J. Walker, was presented as a witness in State vs. Cargile, Section "B", noted above. A newspaper picture of him is in this record which shows that his hair and his facial features and characteristics are those of a Caucasion and not of the negroid race. His Honor, Judge Platt testified, that he knew Walker and if Walker had not, himself, told him that he was of the colored race that His Honor would have never known that he was.

Sinee Walker is the one and the only colored grand juror selected in sixteen years, in thirty-two grand juries, and of 384 grand jurors selected, and his appearances identify him as a white person and not as a negro, the only conclusion reasonably admissible is that Walker was not chosen as a negro but because he was mistaken for a white person.

Through the thirty and sixteen years above referred to during which there were no negroes on our grand juries except as noted, the negro population of New Orleans has been very large. The figures for the 1930, 1940 and 1950 census are in the record.

In 1930—328,466 Whites—129,632 Negroes
1940—344,775 Whites—149,034 Negroes
1950—459,400 Whites—227,300 Negroes

With reference to the element are there colored males in Orleans who can meet the qualifications fixed by law for grand jurors, the proof submitted by the defendant on the point, in the opinion of this court, is one of the compelling factors in his case, keeping in mind the Supreme Courts' test of whether "chance or accident alone" could account for the continuous omission of colored grand jurors. The larger the number of legally qualified colored grand jurors in the community the less the probability that their continuous omission from grand juries is a matter of "chance and accident alone."

It is a matter of common knowledge that male negroes have been serving in the Federal Courts in New Orleans on petit juries and grand juries for fifty years and more. The fact that there are male negroes in New Orleans legally qualified to serve on the Federal Grand Jury and who have been continuously serving over the years on the Federal Grand Jury in New Orleans establishes the fact that there are negroes in the community with the legal qualifications to serve on the State Grand Jury in Orleans.

The defendant produced Mr. Ernest O. Becker, assistant superintendent of Public Schools in Orleans; Dr. Rivers Frederick, a colored physician and surgeon in New Orleans for more than fifty years and for many years president of the Louisiana Life Insurance Company, an all colored insurance company with assets in excess of $2,000,000.00, employing some two hundred colored persons, and prominently identified with the Flint-Goodrich Hospital, a large colored hospital in New Orleans; and Mr. Mack A Dyer, Registrar of Voters for Orleans.

Some of the salient features of the testimony of these witnesses was to the effect that there has been a colored university in the locality since 1880 and compulsory education for colored and whites for the past twenty years.

There are four complete colored high schools; two junior highs; four Parochial High Schools for colored. In the last ten years colored public high school graduates total 5286; Parochial High School graduates, 883.

In 1952, white attendance in White high schools, 7754; colored high schools, colored attendance, 5653. (Public schools.)

In 1942, White Public High Schools, 13-059, Colored Public High schools, 4640.

Elementary grades (public) in 1952, white students in schools for whites, 28-295; Colored students in colored Public schools, 25,896; Public elementary Grades, 1942, white students in schools for whites 27,824; colored students in colored schools, Public, 20,612.

Number of colored teachers employed as such in Orleans in Public School system between 850 and 900.

Dr. Frederick testified that his insurance company is the largest and there are twelve other insurance companies exclusively owned and operated by colored persons in New Orleans;

That there are forty odd colored physicians in New Orleans that the staff of Flint-Goodrich Hospital is evenly divided between white and colored physicians, about 35 or 40 of whom are colored; that most of the technical staff are colored; that there are about 12 colored dentists and about 10 or twelve colored pharmacists in New Orleans; In the past fifteen years, two colored Universities in New Orleans; two colored weekly newspapers in locality for several years.

The defendant also produced Mr. Mack A. Dyer, Registrar of Voters for the Parish of Orleans, who gave totals only as far back as 1948 because the registration of colored persons to vote in any substantial number is a recent development in the community.

In 1948 there were 194,479 white registrants and 13,957 colored registrants.

In 1950, white registrants 186,860, colored registrants 26,029.

In 1952, white registrants 194,794, colored registrants 25,545.

In reference to the selection of grand juries in Orleans and to prove that no negroes, with the one exception noted above, has ever served on a grand jury in Orleans for thirty years and more, and for the sixteen years past that colored persons have been placed in the jury wheel, the defendant had as witnesses five of the six judges of the Criminal District Court, Orleans.

His Honor Judge J. Bernard Cocke of Section "E" testified that he had been judge of said court since November of 1944; that in the selection of the grand jury he had always followed the same procedure; that having in mind his duty under the law to select grand jurors, that he considered it his judicial as well as moral duty to select those persons best qualified to serve as such grand jurors; that that is what he did;

That he tried, as far as he was able, to get a fair cross section of the community from the personnel of the Grand Jury venire list furnished him by the Jury Commissioners, which list gives the prospective grand jurors' names, home address, business and business address, age and previous service, if any, on grand and petit juries; that he call upon his own knowledge of people in the community, whom he knew personally or by general repute, people of good reputation and of good moral character and who are ordinarily able, by reason of their place in the community, to give grand jury service, which can sometimes be onerous service;

With that in mind that His Honor sent about twenty letters from which to make the selection of twelve; that sometimes those he considered best qualified to serve were not available and that he was sometimes called upon to select men whom he did not know personally or by repute.

That he had never selected any colored person for grand jury service and none that sent letters to were colored persons;

That he had never discriminated against any person because of race or color.

His Honor Judge Fred Oser of Section "C" testified that he has been serving as presiding Judge of Section "C" since the latter part of 1936; that his method of selecting a grand jury was to select from the venire of seventy-five some twenty or twenty-five for interview and from this number he selected twelve grand jurors;

That he had never selected a colored person on the grand jury; that none of those selected to be interviewed were colored; that he had never discriminated against any venireman because of race or color in making his decision.

His Honor, Judge Frank T. Echezebal of Section "D" testified that he has been serving as presiding Judge of Section "B" for thirty years. He made his own study and examination of the persons appearing on the list, as described in his testimony to guide his selection; it was not his practice, preliminarily to making a selection, to send for any of the veniremen for an interview. He had never appointed a colored person on the grand jury; that he had never discriminated against any venireman because of race or color in selecting the grand jury.

His Honor Judge George Platt of Section "B" testified that he had been Judge of that court since 1936, and detailed his method of selecting from the grand jury venire some fifteen for interview from whom he selected the grand jury; that if he could not secure twelve from that fifteen that he selected others from the list and summoned them for interview;

That he had never interviewed a colored person for selection as a grand juror and he had never selected a colored person as a grand juror.

His Honor Judge Niels F. Hertz, Judge of Section "F" who selected the Grand Jury which returned the indictment herein against the defendant testified:

> "Under the law there are 75 names and we sent letters to only 25 and I was able to secure enough men that I felt were competent, outstanding and men of ability to serve as grand jurors."

When asked if there were any negroes included in the 25 names to whom he sent letters, His Honor testified:

> "I did not know at the time I wrote the letters what color they were when I was furnished the list by the Jury Commissioners. In selecting my Grand Jury I usually

pick out twenty-five or thirty names, and in this case I picked twenty-five men who held prominent positions, such as vice-presidents of banks, managers of corporations and men who owned their own business in New Orleans."

His Honor testified that none of the grand jury selected by him were colored and that none of the 25 veniremen he sent for to interview touching their service as grand jurors were colored;

That he had selected one grand jury prior to the grand jury in question and that he used the same method in the selection of the previous grand jury.

His Honor further testified that after he had determined upon the selection of 12 for the Grand Jury that he noticed three or four colored persons sitting among the grand jury veniremen.

The State proved that nine of the veniremen on the list of 75 from which the grand jury in question was selected by His Honor were colored.

It is respectfully the opinion of this court that the testimony of His Honor who selected the Grand Jury in question does not differentiate his method of selecting grand juries or the Grand Jury in question from the method of selecting grand juries in Orleans over a period of thirty or sixteen years during which period and under which method and procedure negroes were continuously omitted from grand jury service.

Perhaps it should be observed herein that having to select twelve grand jurors from seventy-five veniremen the judges are put to the necessity of using a discretion in the choice of one venireman over another and others. Obviously and generally that discretion should be exercised in the direction of selecting the twelve that the judge believes will best discharge their obligation to the public as grand jurors.

The record over the years shows that the judges of this court have unfailingly selected grand jurors whose ability and integrity the public could have and did have the utmost confidence and who did in fact discharge their obligations to the public as grand jurors.

The Motion to Quash does not challenge this fact. The defendant contends that in the selection of the grand juries throughout the years, however satisfactory those grand juries may have been in all other respects, that the Fourteenth

Amendment was violated according to the criterion that the United States Supreme Court has established in a similar state of facts in a number of instances.

It is unnecessary for this court to state that it is completely aware of the truth of the Judges' statements that they had never discriminated against any grand jury venireman because of race or color. The situation that confronts this court is that the United States Supreme Court has established a criterion of discrimination which is binding on all courts and must be applied to the facts in the case to determine that issue.

In the series of cases decided by the United States Supreme Court, officers of the various states charged with the administration of the jury laws of those states testified that they did not discriminate against any person because of race or color.

Where a substantial part of the population are negroes and of those negroes there are some if not many who can qualify under the law as grand jurors and negroes have been continuously omitted from grand juries over an extended period of time, the Supreme Court of the United States stated that in such a situation "chance or accident alone could hardly have accounted for the continuous omission of negroes from the grand jury lists for so long a period as sixteen years or more", and held systematic and intentional discrimination to be the reason for the continuous omission of negroes from the Grand Juries of the locality in question.

Having established this rule in Smith vs. Texas and Hill vs. Texas and Norris vs. Alabama, supra, and being thereafter confronted with the same factual situation in and from the State of Mississippi, the Supreme Court of the United States then made the blunt, categorical statement which we have quoted above and will quote again:

"When a jury selection plan, whatever it is, operates in such a way as always to result in the complete and long continued exclusion of any representative at all from a large group of negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand."

Patton vs. Mississippi, supra.

Since the motion to quash also raises the question of systematic discrimination in the operations of the jury commissioners of Orleans, it is necessary that the court direct itself also the case for or against the jury commissioners.

Since the operations of the Jury Commissioners are part of the machinery of this court, the court advances the proposition that it can take judicial knowledge of the operations of said commissioners. The court will speak of such knowledge in the twenty and one-half years of its tenure.

Prior to 1936 the names of colored persons were not placed in the jury wheel. The jury commissioners for the first time placed such names in the jury wheel in 1936, and, consulting the opinion of our Supreme Court in State vs. Dorsey, supra, we can readily learn with what energy and thoroughness the Jury Commissioners addressed themselves to that task from 1936 to 1948. They spared no effort and overlooked no source that might produce the name of a qualified colored person.

From 1948 to September of 1952, the tenure of the jury commissioners just retired from office, the judge of this court was not so closely associated with the jury commissioners as in the previous years, but this court knows that the number of negroes on the grand and petit jury venires throughout these four years is on a parity with the number of negroes on the venires in the previous years when the jury commissioners, as established by the record of the Dorsey case, were exerting themselves to the fullest in this regard.

The number of negroes to the knowledge and observation of this court on a petit jury venire of 150 names ranges from a low of about ten or twelve to a high of thirty or thirty-five. The usual number is about sixteen or eighteen and sometimes twenty.

The number on a venire of seventy-five would ordinarily be between six and ten probably more.

We have noted that there were nine negroes on the seventy-five venire from which the grand jury in question was selected. On the October 1952 petit jury venire for this court there were about sixteen or eighteen. Four are serving on the petit jury panel for this month.

On the venire of seventy-five given this court for the selection of a grand jury on August 15th, 1952, there were not less than six and probably seven.

There is the testimony of the retiring jury commissioners in this record.

While the Jury Commissioners, according to their testimony, failed to inform themselves of many statistical details on the local population which the jurisprudence declares it was their

duty, under pain of discrimination, to do, and while the jury commissioners testified they made no special or particular effort to secure the names of colored prospective jurors, nonethe-less they established by their testimony that the means they employed to reach the citizenry at large, white and colored, was everything that could reasonably be required.

They testified that as a source of possibly jury material they used, indiscriminately and without regard to race or color, the city directory, the registration rolls, the telephone book. The number of colored registered voters in Orleans in recent years has been substantial.

It is a matter of common knowledge among those informed on the subject matter, that the number of negro telephone subscribers in Orleans is very large and the telephone directory, therefore, is as abundant a source of negro jury material as can be found.

The City directory is a compendium of all the residents of the City of New Orleans, colored and whites.

Therefore this court is respectfully of the opinion that no claim of race discrimination can be predicated on the operation of the office of the jury commissioners by the retiring commissioners who served from July of 1948 to September of 1952 because whether the Commission had or had not informed themselves as to population date, and whether they could say or could not say that they had made a special effort to reach colored prospects, the fact is that they actually did everything that could be expected of an honest, fair, efficient and non-discriminatory administration of their office.

As this court views the facts the names of colored persons are placed in the jury wheel and drawn from the jury wheel thereafter in due course and placed on the grand jury venire. It is obvious, therefore, that the reason that no colored person has ever served on a grand jury in the sixteen years in which colored persons have been placed in the jury wheel is because no colored person has been selected by any of the judges, including the judge of this court, for such service.

There can be no doubt that while the judges have a discretion in the selection of twelve grand jurors from seventy-five veniremen that that discretion is bound on all sides by the Fourteenth Amendment and must be exercised within its limits and limitations;

That while the assumption is that the judge is to select the twelve, who in his opinion, are the best qualified for the service, in whom the community can have the most confidence and feel the most secure, that any means or standard of selection that continuously eliminates the colored person violated the Fourteenth Amendment and must be revised to admit negroes to comply with said Amendment.

To re-quote from the quoted portion of State vs. Perkins, hereinabove, our Supreme Court declared:

> "Suffice it to say that the Supreme Court of the United States has declared in substance, that equal protection of the law required that a colored person shall be afforded an opportunity to have members of his race serve upon the grand and petit jury in cases involving his life or liberty and, therefore, any denial of this guarantee, either by a law which does not provide a fair mode of selection or by officers who systematically administer a valid law so as to accomplish gross inequalities, cannot be countenanced."

If colored persons constantly appearing on the grand jury venire are consistently eliminated from grand jury selection because of a certain standard of selection employed by officers making the selection, can it be said that colored persons have the opportunity to serve on the grand jury?

Does the systematic administration of our grand jury selection law accomplish "gross inequalities" which our Supreme Court says (above) "cannot be countenanced", when a standard of selection consistently eliminates the negro from the grand jury.

The United States Supreme Court in Patton vs. Mississippi, supra:

"When a jury selection plan, whatever it is * * *" (To interpolate)—If a grand jury selection plan of selecting, in some officer's opinion, the twelve best men on the venire—(continuing from Patton vs. Mississippi) "operates in such a way as always to result in the complete and long continued exclusion of any representative at all from a large group of negroes * * * indictments and verdicts returned against them by juries thus selected cannot stand."

Our situation in Orleans seems to be particularly vulnerable to the theory of the United States Supreme Court "that chance

and accident alone can hardly explain the continuous omission of negroes from grand juries over a long period of time" because we have five and in the last four years, six courts, selecting grand juries and the record shows that notwithstanding the number of courts that select grand juries, and regardless of which court selects a grand jury, or when that court selects a grand jury, or how that court selects a grand jury, or how often one court or all courts have selected a grand jury, or over what period of time any court or all courts continue to select grand juries, the omission of negroes is consistent, constant and the same.

In the practice of four of the six courts to select from the list of seventy-five, fifteen, twenty or twenty-five for interview, preliminarily to their appointment as grand jurors, no colored person was even among the veniremen selected for interview by any of the four courts.

In the sixteen years that colored persons have been placed in the jury wheel 384 grand jurors have been selected at various times by the six courts. Of this number one colored person, who could be mistaken for a white person, was selected.

If one unmistakable colored person had been selected in one hundred grand jurors, with our large colored population and with so many of them legally qualified for grand jury service, the case for systematic discrimination would be strong.

If one in two hundred, it would be stronger.

If one in three hundred it would be stronger yet.

Here we have, let us say, one in four hundred and that one seems to be an accident.

This is the record.

While this court is conscious of its fallibility, it is firm in its opinion that this record in the Supreme Court of Louisiana or of the United States, would support no other ruling except a ruling quashing the indictment herein because of intentional and systematic exclusion of negroes from grand juries in Orleans Parish because of race and color and in violation of the Fourteenth Amendment, inclusive of the grand jury that returned the indictment in this case, because that grand jury is not differentiated from the pattern of jury selection that consistently eliminated colored persons from grand juries.

This court has been selecting grand juries in its turn for twenty years and having resorted to the device of judicial knowledge for other purposes herein perhaps should resort to

this device to give some account of the grand juries that have been selected by this court throughout the years.

This court having just selected a grand jury in the last days of August past has a vivid recollection of the details of the selection of that grand jury. This is no held because the selection of this grand jury is no part of the series involved herein.

Prior to the above selection it was three years since this court selected a grand jury and this court has no recollection of the details of the selection of that prior grand jury nor any recollection of the details of the selection of any of the grand juries that preceded it.

In the selection of the last grand jury this court approached the selection of that grand jury with a determination to place negroes on the grand jury, if feasible for the purpose of destroying our unbroken record of grand juries with no negroes and the legally fatal consequences of that record, as well as a regard for the Fourteenth Amendment. However, the final result was no negroes on this grand jury.

A discussion of this grand jury is not pertinent here but this mention is made to introduce the statement that while this court approached the selection of the current grand jury with the aforesaid determination in mind, the court had never approached the selection of any previous grand jury with a specific determination to select negroes as it did in this instance.

It has always been the practice of this court to send for and interview every one of the seventy-five veniremen touching their service on the grand jury so this court can and must say that it personally met and spoke to and interviewed every negro on any grand jury venire drawn for section "A" since 1936. This court remembers, in a general and vague manner that most negroes in most instances requested to be excused. With all regard for the members of the colored race, and excluding the last grand jury venire, this court can not now recall any individual of the colored race that was available for grand jury service although this court does not wish to be understood to say that there were not some who were available for grand jury service. This court has no recollection one way or the other at this time.

If this court ever failed to place any available negro veniremen on a grand jury in so failing this court was not conscious

at the time of the violation of any legal principle against denial of the negro of equal privileges under the law.

It is the individual opinion of this court that the selection of grand juries in this community throughout the years has been controlled by a tradition and the general thinking of the community as a whole is under the influence of that tradition.

For decades before 1936 no negroes were placed in the jury wheel and no thought or concern was given this matter by any element in the community. Every venire, from one six months to the other, continuously throughout the years was all white and the continuous selection of grand juries was from such all white venires. No thought occurred to anyone in office or in the community except the thought of selecting the twelve most representative, most outstanding citizens on the grand jury venire and to constitute them the grand jury.

In 1936 this was then and had been the tradition throughout the preceding years and was the method of selection of grand juries expected by everybody and this continued to be the expected method of selection of the grand jury.

Speaking of itself and for itself alone, this court cannot say that it has ever discriminated against a colored person because of his color in selecting a grand jury, because to its knowledge it has never been conscious of doing so, but this court says that in the selection of grand jurors and grand juries, excepting the present grand jury, that the dominating influence in the exercise of its discretion was the traditional standard of selection, which, traditional standard would ordinarily eliminate the colored venireman as a grand jury selectee, as it has in fact consistently eliminated the colored venireman.

If the indictment herein had been returned by the grand jurys elected by this court three years ago, this court would believe that that indictment should be quashed for the same reason that it believes that the indictment herein should be quashed, namely because the Supreme Court of the United States and of Louisiana declares that the continuous omission of Negroes from the grand jury over an extended period of time, in a community where there are many legally qualified Negroes eliminates the theory that Negroes were omitted through chance or accident and installs the theory of omission because of systematic exclusion because of color unless the selection of the grand jury in question can be favorably dif-

ferentiated from the selection pattern that consistently pr
duced no Negro grand jurors.

For the reasons above set forth it is, therefore, the ruling
this court that the indictment herein be quashed because th
grand jury which returned said indictment was empaneled
violation of the Fourteenth Amendment to the Constitution
the United States and the Act of Congress, for the purposes
this indictment, and the defendant herein be discharged fro
all legal obligation to answer to the charge therein, or a
charge therein included, under said indictment.

While the thought may have been omitted from its prop
place hereinabove, this court believes it should be noted,
further reference to the quality of grand juries selected by th
courts over the years, that the grand jury which returned th
indictment herein, by its initiative, energy, courage and ded
cation to public duty, earned for itself more public approv
and more public acclaim than any grand jury within memor

.....

Judge, Section "A"

New Orleans, La., October 1952.

139-324-"A"

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

The State of Louisiana *ss.*

Indictment—filed July 10, 1952

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one, ALFRED DOWEL, late of the Parish of Orleans on the fifth day of July in the year of our Lord, one thousand, nine hundred fifty-two with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans committed aggravated rape upon one JENNY DARNELL,

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contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

/s/ MATTHEW S. BRANIFF,
Asst. District Attorney for the Parish of Orleans.

B19 P137

[Back]

NO. 139-324

SECTION A

STATE OF LOUISIANA

versus

ALFRED DOWEL

INDICTMENT FOR

VIO. R. S. 14:42 (AGGRAVATED RAPE)

A true bill

/s/ Robert M. Walmsley
Foreman of Grand Jury

New Orleans, July 10, 1952

Returned into open Court and recorded and filed July 10th, 1952.

/s/ E. A. Mouras, Minute Clerk

Arraigned August 29th, 1952 and pleaded Not Guilty

/s/ A. B. Humphrey, Minute Clerk

UNITED STATES OF AMERICA

STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA

I, V. J. Courville, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the attached twenty-eight pages have been certified by the Clerk of the Criminal District Court for the Parish of Orleans as true and correct copies of the pages appearing in the case entitled State of Louisiana v. Alfred Dowels, bearing number 139–324 on the docket of the Criminal District Court in and for the Parish of Orleans, and that, according to the stipulation between the State of Louisiana through M. E. Culligan, Assistant Attorney General, and Petitioner, through Herbert J. Garon and Leopold Stahl, attached hereto, the said record, pages 1 through 28, is the one and the same offered by Petitioner in evidence before the Criminal District Court for the Parish of Orleans in the matter entitled State of Louisiana v. Freddie Eubanks, bearing number 146–235 on the docket of said court, and is the one and the same record considered by the Supreme Court of Louisiana in the said matter, bearing number 43,106 on the docket of the said Supreme Court of Louisiana.

In witness whereof, I hereunto sign my name and affix the seal of the court aforesaid, at the City of New Orleans, this 24th day of February, A. D., 1958.

V. J. COURVILLE,
Clerk, Supreme Court of Louisiana.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 550

FREDDIE EUBANKS,

Petitioner,

vs.

STATE OF LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE PETITIONER

HERBERT J. GARON
532 National Bank of Commerce Bldg.
New Orleans, Louisiana

LEOPOLD STAHL
937 National Bank of Commerce Bldg.
New Orleans, Louisiana

Counsel for Petitioner

INDEX

SUBJECT INDEX

CITATIONS

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BRIEF FOR THE PETITIONER

Opinion Below

The opinion of the Supreme Court of Louisiana (R. 106-116) is reported at 232 La. 289, 94 So.2d 262.

Jurisdiction

The judgment of the Supreme Court of Louisiana was entered February 25, 1957 (R. 106). On April 1, 1957 the Louisiana Supreme Court refused a rehearing (R. 120). The petition for writ of certiorari was filed June 19, 1957, and was granted October 14, 1957 (R. 121).

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

Question Presented

Whether the total exclusion of Negroes from grand jury service in the Parish of Orleans continuously and consistently, without exception, for as long as any man remembers, including the grand jury that indicted petitioner herein, constituted such systematic exclusion of Negroes because of race and color as to deny defendant due process of law and equal protection of the law as guaranteed by the Constitution and statutes of the United States and by the Constitution of the State of Louisiana.

Statutes Involved

Fourteenth Amendment to the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

18 Stat. 336, as amended, 18 U.S.C. 243:

> "No citizen possessing all other qualifications . . . shall be disqualified for service as grand or petit juror in any Court of the United States, or of any State on account of race, color, or previous condition of servitude; . . ."

Article 1, Section 2, Constitution of the State of Louisiana:

"No person shall be deprived of life, liberty, or property, except by due process of law. . . ."

Article 1, Section 9, Constitution of the State of Louisiana:

". . . no person shall be held to answer for capital crime unless on a presentment or indictment by a grand jury. . . ."

Louisiana Revised Statutes of 1950, Title 15, Section 172:

"The qualification to serve as a grand juror or petit juror in any of the courts of this state shall be as follows:

"To be a citizen of this state, not less than twenty-one years of age, a bona fide resident of the parish in and for which the court is holden, for one year next preceding such service, able to read and write the English language, not under interdiction or charged with any offense, or convicted at any time of any felony, provided that there shall be no distinction made on account of race, color or previous condition of servitude; and provided further, that the district judge shall have discretion to decide upon the competency of jurors in particular cases where from physical infirmity or from relationship, or other causes, the person may be, in the opinion of the judge, incompetent to sit upon the trial of any particular case.

"In addition to the foregoing qualifications, jurors shall be persons of well known good character and standing in the community."

Louisiana Revised Statutes of 1950, Title 15, Section 192:

"The jury commissioners for the Parish of Orleans shall qualify all persons before their selection as jurors, but the judges of the several district courts shall have the right to decide upon the competency of jurors."

Louisiana Revised Statutes of 1950, Title 15, Section 194:

"The said commissioners shall select at large, impartially, from the citizens of the Parish of Orleans having the qualifications requisite to register as voters, the names of not less than seven hundred and fifty persons competent under this Code to serve as jurors. A list of these names shall be prepared, certified to by the commissioners, and kept as part of the records of their office subject to the orders of the judges of the criminal district court of said parish. The names on said list shall be copied on slips prepared for the purpose, with the number and address corresponding to that on the lists and shall be placed in the jury wheel from which the drawing is to be made. . . ."

Louisiana Revised Statutes of 1950, Title 15, Section 196:

"Not earlier than the fifteenth and not later than the twentieth day of February of each year, and not earlier than the fifteenth and not later than the twentieth day of August of each year, the said commissioners shall draw from the said wheel the names of not less than seventy-five persons, which said names, upon a day next following said drawing, not a Sunday or a legal holiday or a legal half-holiday, shall be submitted by said commissioners to the presiding judge of that section of the criminal district court whose turn it shall happen then to be, to impanel the incoming

grand jury; and said judge, from the names thus submitted, shall select twelve persons who shall constitute the grand jury for the Parish of Orleans for the grand jury term next ensuing. Each judge of the criminal district court shall, in rotation, select the grand jury for the Parish of Orleans. . . ."

Louisiana Revised Statutes of 1950, Title 15, Section 459:

"Whenever, during the trial of any criminal case, either party may desire to offer in evidence any record, paper or document belonging to the files or records of the court in which the trial is proceeding, the presiding judge shall, at the request of such party, direct the clerk to produce such record, document or paper, in order that the same may be used in evidence; and it shall not be necessary for the clerk in any such case to make a copy of such record, document or paper."

Statement of the Case

On June 8, 1954, the petitioner, Freddie Eubanks, a youthful colored male whose exact age has never been established, was indicted by the Orleans Parish Grand Jury for the crime of murder of an aged white female by the name of Mrs. Mabel E. Gordy Clarkson on or about the 24th day of May, 1954 (R. 1).

Through counsel, on August 22, 1954, the petitioner filed a motion to quash the indictment for the reason that petitioner was deprived of due process of law and equal protection of law as guaranteed by the Constitution of the United States and by the Constitution of the State of Louisiana by virtue of the systematic exclusion of Negroes from the grand jury which indicted him, as well as from

preceding grand juries in Orleans Parish (R. 22, 23). Thereafter on September 17, 1954 and January 4, 1955, testimony was adduced on the motion to quash the indictment and stipulations entered into between the State of Louisiana and the petitioner bearing upon the said motion (R. 50-105).

On January 7, 1955, the petitioner filed a Supplemental Motion to Quash the indictment on the same grounds of unconstitutional exclusion of Negroes from the grand jury, and on January 12, 1955, the Court denied the motions to quash, and a bill of exception was timely reserved (R. 24-32).

On July 1, 1955, the Petit Jury returned a verdict of guilty as charged against petitioner (R. 20).

On February 24, 1956, the petitioner filed a motion for a new trial and a motion in arrest of judgment, which were denied (R. 39-45). Petitioner filed formal bills of exception, including those based upon the motions to quash and the adverse rulings on the evidence during the hearings on the said motions (R. 27-38; 45-48).

On May 2, 1956, the petitioner was sentenced to death by electrocution (R. 48). On the same date, petitioner moved for a suspensive appeal to the Supreme Court of Louisiana, which was granted (R. 49). Thereafter argument in behalf of petitioner was presented to the Louisiana Supreme Court based, *inter alia*, upon the constitutional questions raised in the said motions to quash the indictment, and on February 25, 1957, the conviction and sentence were affirmed by the Supreme Court (R. 106-116).

Application for rehearing was timely presented to the Louisiana Supreme Court (R. 117-119), and refused on April 1, 1957 (R. 120).

On June 19, 1957, petitioner filed a writ of certiorari and motion to proceed in forma pauperis in the United States Supreme Court.

On October 14, 1957, the Supreme Court of the United States granted petitioner's writ of certiorari and motion to proceed in forma pauperis (R. 121).

Summary of Argument

Petitioner is a Negro who was indicted, convicted and sentenced to death in Orleans Parish, State of Louisiana, for the murder of a white woman.

The all-white grand jury which indicted petitioner was chosen from the Parish of Orleans where approximately 32% of the population are Negro. There is a high percentage of the Negro race qualified for grand jury service by reason of their education, and business and professional training and achievement. A large percentage of Negroes are registered to vote, and Negroes have served on grand juries in the Federal courts of New Orleans for over fifty years.

Yet, there has never been a Negro selected to serve as a grand juror in the state courts in the history of Orleans Parish in the memory of any living person, except one Negro who possessed the characteristics of a white man and who was chosen by a judge under the mistaken belief that he was white.

Such total exclusion of a class of people from grand jury service where there are large numbers of their class available and qualified to serve constitutes a *prima facie* case of deliberate, systematic and purposeful discrimination against that class of persons contrary to the Fourteenth Amendment to the Constitution of the United States

which guarantees equal protection of the laws to all citizens of the separate states.

The Supreme Court of the United States has declared that equal protection of the laws requires that a colored person shall be afforded the opportunity to have members of his race serve on the grand jury in cases involving his life or liberty and, therefore, any denial of this guarantee, either by a law which does not provide a fair mode of selection or by officers who systematically administer a valid law so as to accomplish gross inequalities, cannot be countenanced.

Where such complete exclusion of the Negro has been accomplished, as in Orleans Parish, the burden of rebutting the *prima facie* case of systematic exclusion rests with the state, and it cannot discharge that burden by mere general assertions of public officials that they have not discriminated.

The complaint in this case is not against the statute which is believed to be constitutional, but against those public officials who have administered under that statute so as to effectively proscribe the Negro race in Orleans Parish from grand jury service.

ARGUMENT

The Conviction of a Negro Upon an Indictment Returned by the Grand Jury of a Parish in Which, at the Time of Such Return and Long Prior Thereto, Negroes Were Intentionally and Systematically Excluded From Grand Jury Service, Solely on Account of Their Race and Color, Denies to Him the Equal Protection of the Laws, in Violation of the 14th Amendment of the Federal Constitution.

Petitioner is a Negro who was indicted for the murder of a white female. He pleads that the indictment be quashed because of the systematic and intentional exclusion of Negroes from grand juries in Orleans Parish, including the grand jury which returned the indictment against him.

The Supreme Court of the United States has established by a long succession of opinions a criterion by which it determines whether there has been systematic and purposeful exclusion of Negroes from grand juries because of race and color. By applying that criterion to the facts herein, it irresistibly follows that the indictment returned against petitioner should have been quashed as being repugnant to the Constitution of the United States.

From the testimony of a vast number of witnesses called by the petitioner, including five of the six judges of the Criminal District Court for the Parish of Orleans, the senior of whom began serving in 1921 (R. 82-85; 88-101), the district attorneys for the Parish of Orleans from 1927 through 1954 (R. 85), the Clerk of the Criminal District Court since 1920 (R. 101), jury commissioners for the Parish of Orleans from 1928 through 1954 (R. 50-58; 69-77), the Registrar of Voters of the Parish of Orleans since

1952 (R. 59-61), Assistant Superintendent of Public Schools since 1944 (R. 62-69), Clerk of the United States District Court for the Eastern District of Louisiana and ex-officio Jury Commissioner since 1939 (R. 79-81), and from the stipulations entered into between the State and petitioner, as well as the exhibits filed (R. 81, 87; 103-105), the following unalterable conclusion must be drawn, to-wit:

That notwithstanding a substantial Negro population in New Orleans since the turn of the century, including literate, schooled, intelligent and qualified Negroes eligible for grand jury service, and including six qualified Negroes on the venire submitted to Judge Frank T. Echezabal for selection of the grand jury that indicted petitioner, that no known Negro was ever called for grand jury service in the history of Orleans Parish, to the memory of any living person.

It was established by the testimony of Ernest O. Becker, Assistant Superintendent of Public Schools for Orleans Parish for ten years preceding his testimony that there has been a system of compulsory education for Negroes in Orleans Parish for over thirty years, and that Negro children have been required to attend school through their sixteenth year (R. 63). For the session 1953-1954, there were 51 white grade public schools with an enrollment of 26,900 and 32 Negro grade public schools with an enrollment of 26,129 (R. 63, 64). During the same period there were 860 white teachers compared with 677 Negro teachers in said elementary schools (R. 64). White secondary public schools numbered 18 with 12,422 students and 550 teachers while Negro secondary public schools numbered 9 with 7,243 students and 301 teachers (R. 64). At the university level, the witness testified that during the same period, Negroes were attending Loyola University, and two Negro universities of over one thousand enrollment (R. 65).

Registration of Negroes in public elementary and secondary schools for the period 1923-1954 was also shown to be substantial (R. 103-105).

The testimony of Mack A. Dyer, Registrar of Voters since 1952 was to the effect that the majority of registrants could completely fill out and sign their application cards and that very few required assistance (R. 60). In connection with his testimony a record of colored and white registration, 1951-1954, was filed showing a substantial number of Negroes registered to vote (R. 103).

Mr. A. Dallam O'Brien, Clerk of the United States District Court for the Eastern District of Louisiana, and ex-officio Jury Commissioner, established that for a number of years prior to the date of his testimony at least two Negroes per year from Orleans Parish served on the Federal grand jury (R. 79-81).

It was also established by stipulation in order to conserve many days of hearing, that the petitioner could produce as witnesses at said hearing, 100 Negro residents of Orleans Parish, qualified as grand jurors, who were professional or business people, and who have never served as grand jurors (R. 87).

From the cumulative testimony of the Jury Commissioners for the Parish of Orleans from 1928 through 1954, it is well established that there has been a conscientious and consistent attempt to place the names of qualified Negroes in the wheel of prospective jurors in Orleans Parish (R. 50-58; 69-78). Mr. William P. Dillon, who served from 1928 to 1940, testified there were qualified Negroes in the wheel each year in which he served (R. 52), and that there were Negroes among the 75 submitted to the judges on practically each occasion of the selection of the grand jury, as he appeared in court on those occa-

sions and observed the Negroes in attendance (R. 53). Since two grand juries are selected each year, and Mr. Dillon served for twelve years, there would have been Negroes on practically each panel on twenty-four occasions. Mr. Walter E. Douglas, who served as Jury Commissioner from 1942 to 1948 and from 1952 to date of hearing, also testified that qualified Negroes were in the jury wheel each year in which he served (R. 69). Mr. Dudley Desmare served as Jury Commissioner from 1948 to 1952 and testified identically as the other gentlemen with regard to the presence of qualified Negroes in the jury wheel during his tenure of office (R. 76).

The procedure for drawing and impaneling grand juries in the Parish of Orleans is set out in the Revised Statutes of Louisiana of 1950, Title 15, Section 196 (Louisiana Code of Criminal Procedure). This section provides that twice annually the jury commissioners shall draw from the jury wheel the names of not less than seventy-five persons, which said names shall be submitted to the presiding judge of the Criminal District Court whose turn it shall happen then to be, to impanel the incoming grand jury. The judge selects twelve persons from the seventy-five names submitted.

There were six Negroes on the panel of seventy-five which was submitted to Judge Frank T. Echezabal who selected twelve white men to serve as his grand jury and which grand jury indicted petitioner (R. 78, 87).

While the minutes of Judge Echezabal's Court do not reflect how he selected the grand jury which indicted petitioner (R. 6, 7, 94), Judge Echezabal testified that he selected this grand jury in the same manner that he selected all of his grand juries since he ascended to the bench in October, 1921 (R. 92). Substantially, Judge Echezabal's method of selection was as follows: he did not interview

any of the members of his panel, but on the basis of his lifetime residence in New Orleans for a period of 77 years he was admittedly familiar with a large number of the names on the panel, and additionally he had the benefit of the street addresses, occupations, telephone numbers and the history of their service as petit and grand jurors. Judge Echezabal was familiar with the streets and neighborhoods in the City of New Orleans and it is submitted that he could tell at once from his list who were citizens of prominence in the community, who were from modest or poor neighborhoods and who were from colored neighborhoods. The knowledge of both the neighborhood and the occupation served to inform the Judge of the vital data he was seeking in the selection of his grand juries. As Judge Echezabal said, he was looking for the qualities of good character, citizenship, availability and education in his prospective jurors (R. 93). He was sure to find these qualities among the names of those jurors he knew personally or by reputation in addition to those whose records disclosed they were men from substantial neighborhoods who enjoyed high positions and occupations. In all events, Judge Echezabal never selected a single Negro in all of his years on the bench (R. 91).

Each of Judge Echezabal's colleagues of the Criminal District Court for the Parish of Orleans was called to testify with reference to his method of selecting his grand juries.

Judge Niels P. Hertz, presiding judge at the trial of petitioner, declined to testify (R. 101, 102).

Judge William J. O'Hara testified that he has been a member of the Court since May, 1932; that while he has in each instance attempted to interview all members of his panel before selecting his grand jury, that he never selected a Negro, although there was an average of between 6 and 10

qualified Negroes on each of his panels from 1936 and continuously thereafter. Judge O'Hara testified that in the case of *State of Louisiana* v. *Alfred Dowels*, No. 139-324 of the docket of the Criminal District Court for the Parish of Orleans, he sustained the motion of the defendant and quashed the indictment in a case arising out of the same type of attack on the grand jury selected by one of the other judges of the said Criminal District Court. Judge O'Hara's reasons for judgment in sustaining the motion to quash were very revealing as to practices in the past and counsel offered them in evidence, but their admission was disallowed by the trial Court, to which a bill of exception was timely filed (R. 94-98, 102, 37, 38).[1]

Judge George P. Platt testified that he had been a judge of the same court since 1936; that he knew Negroes were

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[1] In the opinion of the Louisiana Supreme Court, the trial judge correctly disallowed the introduction of the reasons for judgment in a different though similar case, on the authority of *State of Louisiana* v. *Green*, 221 La. 713, 722; 60 So.2d 208, 210 (R. 110). The Louisiana Supreme Court erred in citing the *Green* case as authority for this proposition, however, because in the *Green* case, the defendant was indicted by a grand jury which was selected by a new method of jury selection adapted by the jury commission of Concordia Parish, after the decision of the Supreme Court of the United States in *Cassell* v. *Texas*, 339 U.S. 282, which made it unnecessary to inquire into the practices of the past. In the instant case, however, it is not only material but essential that the court consider past practices of jury selection in Orleans Parish, because there is no showing whatever to differentiate the selection of the grand jury that returned the indictment against petitioner from the continuous succession of grand juries in the past from whose rosters Negroes were consistently omitted.

In following the law of the State of Louisiana, in Louisiana Revised Statutes of 1950, Title 15, Section 459, the clerk of the Criminal District Court was not required to make a copy of the record of *State of Louisiana* v. *Dowels* in order for it to be considered as evidence in the case, and it was omitted from the transcript of record herein, but, in order to have the record before the Supreme Court of the United States, petitioner has lodged a certified copy of the same with the Clerk of the United States Supreme Court.

on his panels; that he interviewed each of the prospective jurors and that he never selected a Negro to serve on any of his grand juries (R. 88-90).

Judge Fred W. Oser testified that his term of office as judge of the Criminal District Court began in 1936; that he habitually sent letters to approximately 30 or 35 of the 75 names for interviews or telephoned those he knew personally; that he did not recall whether he interviewed a Negro at any time although he felt that he had, but that he never selected a Negro on any of his grand juries (R. 82-85).

Judge J. Bernard Cocke served as judge of the same court since 1944. He testified that of the 75 names submitted to him that invariably he knew approximately 20 personally or by reputation and that the data submitted with the names served as an aid in determining the type of person on the panel; that he would invite the 20 to his chambers for an interview and select his grand jury of twelve from that number; that he never invited or selected a Negro to serve on his grand juries (R. 98-101).

Not a person called to testify, including the said five judges nor the jury commissioners nor the district attorneys nor the clerk of court could recall a single Negro being called to serve as a member of any grand jury except one by the name of Walker, who possessed the physical characteristics of a member of the Caucasian race, and who was selected in the belief that he was a white man and not a Negro (R. 90, 99, 100). As some of the witnesses called were men in their seventies such as Judge Echezabal and Jury Commissioner Dillon, and two had served in the Criminal District Court for nearly 35 years (Judge Echezabal in that capacity since 1921 and Clerk Haggerty since 1920, R. 101), and all were associated in some official capacity with the Criminal District Court and possessed

particular knowledge of the selection and composition of the Orleans Parish grand juries, it must be concluded that no known Negro ever served on any grand jury in the history of the Parish of Orleans in the memory of any living person.

The fact that there have been a large number of Negroes in Orleans Parish and that there have been many qualified among them who have served in professional and executive capacities, who have been qualified by their education, who have been qualified to vote, who have been considered by the jury commissioners to be qualified to serve as grand jurors and who have been legally qualified to serve on the Federal grand jury in New Orleans, establishes a *prima facie* case of discrimination against Negroes in the selection of grand jurors in Orleans Parish. As Judge William J. O'Hara of the Criminal District Court said in quashing the indictment of a previous grand jury,

> "The fact that there are male Negroes in New Orleans legally qualified to serve on the Federal Grand Jury and who have been continuously serving over the years on the Federal Grand Jury in New Orleans establishes the fact that there are Negroes in the community with the legal qualifications to serve on the State Grand Jury in Orleans."

State of Louisiana v. *Dowels*, 139-324, Criminal District Court for the Parish of Orleans, unpublished.

The conclusion is undeniable that there has been systematic, intentional, unlawful and unconstitutional exclusion of Negroes from the grand juries in the Parish of Orleans continuously and uninterruptedly for as far back as man remembers, solely and only because of their race and color, and that the systematic, intentional, unlawful and unconstitutional exclusion has extended to the present

grand jury which indicted the defendant herein, contrary to the Fourteenth Amendment to the Constitution of the United States, as well as to the Constitution of Louisiana of 1921, Article 1, Section 2, which adopted in part the language of the Fourteenth Amendment to the Federal Constitution.

The sacred principles of the Fourteenth Amendment of the Federal Constitution, including the due process, equal protection and privileges or immunities clauses contained therein have been violated by the State of Louisiana which has countenanced the unlawful grand jury selection methods in the Parish of Orleans.

The Act of Congress pursuant to those constitutional guarantees is 18 Stat. 336, as amended, 18 U.S.C., Section 243, to-wit:

> "No citizen possessing all other qualifications . . . . shall be disqualified for service as grand or petit juror in any Court of the United States, or of any State, on account of race, color, or previous condition of servitude; . . ."

The question of unlawful discrimination in the selection of grand juries is not novel to the jurisprudence of Louisiana or of the United States. Cases are legion in which the United States Supreme Court has declared that convictions of Negroes for slaying or raping of whites cannot be countenanced when, in obtaining the conviction, the Constitution has been violated. The Supreme Court of Louisiana has followed this principle in cases in which discrimination was shown. *State of Louisiana* v. *Anderson*, 205 La. 710, 729; 18 So.2d 33, 40; *State of Louisiana* v. *Nichols*, 216 La. 622, 633; 44 So.2d 318, 321.

Therefore the decree of the Louisiana Supreme Court in the Eubanks case is erroneous, as it is in conflict with

prior decisions of the Supreme Court of Louisiana, as well as decisions of the United States Supreme Court.

One of the most famous cases dealing with the subject of Negro discrimination in the selection of the grand jury, which was decided by the United States Supreme Court, was the case of *Norris* v. *Alabama*, 294 U.S. 587, often referred to as one of the "Scottsboro Boys" cases. Mr. Chief Justice Hughes, in delivering the opinion of the Court (at p. 589), cited the case of *Carter* v. *Texas*, 177 U.S. 442, 447, wherein the fundamental concept of systematic exclusion was set forth, as follows:

> "Whenever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States. *Strauder* v. *West Virginia*, 100 U.S. 303; *Neal* v. *Delaware*, 103 U.S. 370, 397; *Gibson* v. *Mississippi*, 162 U.S. 565. This statement was repeated in the same terms in *Rogers* v. *Alabama*, 192 U.S. 226, 231, and again in *Martin* v. *Texas*, 200 U.S. 316, 319. And although the state statute affirming the qualifications of jurors may be fair on its face, the constitutional provision affords protection against action of the state through its administrative officers in effecting the prohibited discrimination . . ."

In the *Norris* case, the Supreme Court found that no Negro had served on any grand jury in that county within the memory of witnesses who had lived there all of their lives, and that in view of there being qualified Negroes in

the county this testimony alone made out a *prima facie* case of the denial of equal protection which the Constitution guarantees. Nor was the *prima facie* case overthrown by the fact that the Alabama statutes fixed a high standard of qualifications for jurors and that the jury commission was vested with a wide discretion.

This decision is particularly applicable to the Orleans Parish situation wherein the same critical facts prevail, i.e., the large number of qualified Negroes available, the total exclusion of Negroes from the grand jury for as long as witnesses remember, and the wide discretion which the court has exercised in selecting jurors. But, notwithstanding the fact that the judges are vested with wide discretion, the *Norris* case demands that that discretion be exercised within the bounds of the Fourteenth Amendment.

Within three years after the *Norris* decision, our Louisiana Supreme Court decided the case of *State of Louisiana* v. *Pierre*, 189 La. 764, 774; 180 So. 630, 633, arising from a capital conviction in St. John Parish. The State Supreme Court (at p. 774), chose to distinguish the case from the *Norris* case by showing that there were few qualified Negroes in this small parish, and denied the defendant's plea. However, the case went to the United States Supreme Court on certiorari, *Pierre* v. *Louisiana*, 306 U.S. 354, 361, and the case was remanded upon a finding of systematic and unconstitutional discrimination in accordance with the rule of *Norris* v. *Alabama*, and other cases cited. Pierre was tried and convicted a second time on an indictment by a grand jury after the discriminatory procedures were corrected in accordance with the mandate of the United States Supreme Court handed down in the first *Pierre* case. *State of Louisiana* v. *Pierre*, 198 La. 619, 627; 3 So.2d 895, 897.

State of Louisiana v. *Nichols, supra,* 216 La. 622, 633; 44 So.2d 318, 321, is another Louisiana case which recognized the mandate of the United States Supreme Court, in denouncing racial discrimination in the selection of grand juries. The Louisiana Supreme Court recognized the existence of the same facts that prevailed in *Pierre* v. *Louisiana, supra,* 306 U.S. 354, 361, and held:

> ". . . we are duty bound to arrive at the same decision as announced by the United States Supreme Court in its findings in the first Pierre case supra. There we find both precedent and authority. We have no doubt that the jury selected in the instant case gave to the accused a fair trial and that the State officials were in good faith and well-intending, but our United States Supreme Court is a judicial planet whose orbit draws into its vortex the findings of all State courts involving all federal constitutional questions which must be obeyed in order to maintain the law in its majesty of final decision."

In view of the *Nichols* and *Pierre* decisions, it can hardly be said that the Louisiana Supreme Court is not aware of the ruling law of the United States Supreme Court, and when we consider that the same judge authored the *Nichols* case and the instant case, it becomes difficult to understand the rationale of the State Supreme Court and to reconcile its two divergent views.

The Court in the instant case accepted the evidence that the Negro population in the Parish of Orleans is approximately 30% and that the names of Negroes have been in the general wheel at all times (R. 109). The Court also recognized the pattern of proof established in *Norris* v. *Alabama, supra,* 294 U.S. 587, 598, to the effect that the United States Supreme Court "could not accept the mere

statement of officials as to the performance of their duties but must actually examine the records to determine whether there had been a deliberate exclusion of Negroes from jury service" (R. 108). Yet, the court did what it knew was prohibited by the United States Supreme Court and accepted the statement of Judge Echezabal that he did not exclude Negroes from his grand jury on account of race, without examining the record. Judge Echezabal did not interview a single Negro in selecting the grand jury that indicted petitioner to determine whether they were or were not qualified or as qualified as the white men he selected. And in all of his 33 years on the bench he never interviewed a Negro and had never placed a single Negro on any of his grand juries. By these facts alone, how could he have afforded the equal protection of the laws to the Negro race? The State Supreme Court cannot justify its conclusion that the judge "thought that the white persons selected were better qualified" (R. 108), when the judge admittedly did not compare qualifications of the two races or even know, according to his testimony, that there were Negroes on his panel (R. 93). It would be fairer to say that the judge selected twelve men he knew to be well qualified and white (R. 93). This had always been Judge Echezabal's method of selection (R. 91), and this method has always served to exclude Negroes from his grand juries. The reason is obvious. Judge Echezabal has always sought to select men he knew personally or by their exemplary reputation in the community. Such a method of selection by a distinguished judge who is well acquainted with many of the leaders of the community would necessarily result in the exclusion of Negroes from his grand juries because Negroes in New Orleans, as a class, have not been able to compete with the white in prominence and in social and economic accomplishment. Such a deliberate method of *inclusion* in always selecting those men known

to the judge personally or the most prominent within his knowledge, necessarily involves the corollary of deliberate *exclusion* of those not known to him or as well situated in the community, and therefore the method must be condemned as not affording equal protection of the laws to a class of people. While the judge is given wide discretion to select grand jurors in Orleans Parish, by this method employed, no Negro not personally known to Judge Echezabal or distinguished by his prominence would ever have the opportunity of serving on the grand jury. As Judge William J. O'Hara observed in his reasons for granting a motion to quash an indictment under the same facts in *State of Louisiana* v. *Dowels*, No. 139-324 of the docket of the Criminal District Court for the Parish of Orleans:

> "There can be no doubt that while the judges have a discretion in the selection of twelve grand jurors from seventy-five veniremen that that discretion is bound on all sides by the Fourteenth Amendment and must be exercised within its limits and limitations . . . that any means or standard of selection that continuously eliminates the colored person violates the Fourteenth Amendment and must be revised to admit Negroes to comply with said amendment."

It is common knowledge that all of the judges in New Orleans have practiced a traditional method of selecting grand jurors. Their own testimony is corroborative of this knowledge. While some have interviewed the prospective jurors and others have not, the result has been the same. The traditional practice has been to select the grand jury on the basis of civic prominence and reputation. Since there have been an average of between 6 and 10 Negroes to between 65 and 69 white persons on the venire (R. 96), those judges who even went to the extreme to

interview all of the veniremen and then compare their qualifications on the above criteria, found that the Negro could not successfully compete with the white for a place on the grand jury, considering the social and economic discrepancy between the two races in New Orleans. Therefore, under the system of selection employed by *all* of the judges, whether they selected the jurors after interviewing them or whether they selected them directly from the list submitted by the jury commissioners, as in the case of Judge Echezabal, it is obvious that no Negro ever had an opportunity to serve on the grand jury, which accounts for the total exclusion of Negroes from all grand juries in the history of the Parish.

This deprivation of the *opportunity* to serve on the grand jury is the violation of the law. Petitioner does not charge that there should have been one or more Negroes on the grand jury that indicted him or that there should have been a fixed percentage or number of Negroes on any particular previous grand jury in Orleans Parish, but that where there has been none of his race serving on any grand jury in the history of the Parish, where there exist large numbers of qualified Negroes available for grand jury service, the conclusion is inevitable that the method of selection by the judges must be designed to deprive his race of the *opportunity* to serve in that capacity.

Therefore, the opinion in the case of *State of Louisiana v. Dorsey*, 207 La. 928, 954; 22 So.2d 273, 281, which is relied upon by the respondent, would not be countenanced by the United States Supreme Court.

In comparing the opinion of the Louisiana Supreme Court (R. 108) with the testimony of Judge Echezabal (R. 93) we are faced with an irreconcilable conflict. Judge Echezabal said that he interviewed neither white nor colored before selecting his grand jury and that he did not know

whether there was or was not a single Negro on his venire. However, the opinion of the Louisiana Supreme Court was, as follows:

> "The record discloses no systematic exclusion of Negroes from the Grand Jury. The only reason Negroes were not selected to serve was that the Judge selecting the Grand Jury thought that the white persons selected were better qualified."

In the final analysis, whichever view is taken, the law has nevertheless been violated. If we accept the view that Judge Echezabal selected his jury without knowing whether Negroes were or were not in the venire, then we must conclude that he did not even consider selecting Negroes. Certainly, he cannot escape his duty to determine whether Negroes are present and available and to consider them for selection on his grand jury. His failure to do so is, in itself, a violation of the law. In following this method, Negroes would never have an opportunity to serve on his grand juries. And, since they have not served during his 33 years on the bench, the mathematical probability of having at least one Negro called to serve in those many years denounces any theory that chance and accident alone have kept Negroes from Judge Echezabal's grand juries. Therefore, it must be concluded that Negroes have been systematically and intentionally excluded from his grand juries.

On the other hand, if we accept what the State Supreme Court thinks Judge Echezabal did, then we at once realize that the court is not mindful of the Fourteenth Amendment of the Federal Constitution and the wealth of jurisprudence established by the United States Supreme Court in this field. If all a judge had to do to comply with the Fourteenth Amendment was to say that "the white persons

selected were better qualified than the colored," then there would be little necessity to retain the Fourteenth Amendment. In following this method, Negroes would never have an opportunity to serve on the grand jury. This is not to say that the judge selecting the jury would not be sincere in his efforts to obtain the twelve truly best qualified persons, but in Orleans Parish this mode of selection would *insure* systematic and intentional exclusion of Negroes due to the fact that while there are many qualified Negroes in New Orleans, 6 to 10 Negroes cannot generally compete with 65 to 69 whites if the judges who stage the contest continuously insist upon the best 12 out of 75.

Since the grand jurors are not chosen in Orleans Parish by lot but by deliberate selection wherein the presiding judge deliberately includes one man and just as deliberately excludes the other, then it necessarily follows that there has been systematic and purposeful exclusion of Negroes from grand juries in Orleans Parish all of these many years.

The State of Louisiana in answer to the serious constitutional question raised by the petitioner, expressed a belief, in its response to the petition for writ of certiorari, that it has complied with the law of *Reece* v. *Georgia*, 350 U.S. 85, 87, which states that for the motion to quash to be controverted it must be supported by evidence, citing *Patton* v. *Mississippi*, 332 U.S. 463, and *Martin* v. *Texas*, *supra*, 200 U.S. 316. The State takes comfort in its allegation that it has successfully rebutted petitioner's *prima facie* case. But, an analysis of that so-called rebuttal shows that the only proof offered was, as follows:

(1) that jury commissioners have placed names of qualified Negroes on every venire in recent years, and

(2) that Judge Echezabal said he has never discriminated against Negroes in the selection of his grand juries.

First of all, the petitioner is satisfied that the unconstitutional practice in the selection of Orleans Parish grand juries does not stem from the level of the jury commissioners.

Second, the *Reece* case, *supra*, 350 U.S. 85, 88, is authority for the proposition that:

> ". . . mere assertions of public officials that there has not been discrimination will not suffice . . ."

To the same effect is the recent case of *Hernandez* v. *Texas*, 347 U.S. 475, 481, which declared that the testimony of the jury commissioners that they had not discriminated, but had selected the best qualified persons in their opinions could not rebut the strong *prima facie* case of the denial of the equal protection of the laws guaranteed by the Constitution.

The State of Louisiana through its counsel has said in its response to the petition for writ of certiorari that if the testimony of the jury commissioners and the judge is not effective rebuttal, then the *prima facie* case is irrebuttable. This is not the case. Effective rebuttal would have been a showing that since the many decisions of the United States Supreme Court which have settled this question of constitutional law, the State of Louisiana had mended its ways and had changed its method of grand jury selection in Orleans Parish. Yet, the method that existed 30 years ago, existed as of the time of Judge Echezabal's grand jury and Judge Echezabal admitted that he followed the same practice in selecting the grand jury that indicted petitioner as he did when he ascended the bench 33 years ago.

It is unrealistic to say that the Judge as a distinguished jurist is above discriminatory practices that are ordinarily

attributed to jury commissioners. Nor do we believe that to prove petitioner's case Judge Echezabal would have to be regarded as a perjurer, both of which expressions have been made by respondent in its response to the petition for writ of certiorari. That Judge Echezabal is a distinguished jurist, scholar and gentleman is without refutation. But his method of grand jury selection has had the effect of violating the 14th Amendment and in this respect the Honorable Judge must heed the mandate of the United States Supreme Court which has set the predicate for this case. As this court said in a concurring opinion in *Cassell* v. *Texas, supra*, 339 U.S. 282, 293:

> ". . . prohibited conduct may result from misconception of what duty requires . . ."

And in *Hernandez* v. *Texas, supra*, 347 U.S. 475, 481, the court quoting from *Norris* v. *Alabama, supra*, 294 U.S. 587, 598, stated:

> ". . . If, in the presence of such testimony as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of Negroes from jury service, the constitutional provision . . . would be but a vain and illusory requirement."

While the landmark cases of *Smith* v. *Texas*, 311 U.S. 128, 130, and *Patton* v. *Mississippi*, 332 U.S. 463, 469, need only be cited to substantiate the brief of petitioner, in a case of such great significance bearing upon the question of racial discrimination, counsel cannot resist including herein certain passages from each opinion. The case of *Smith* v. *Texas* is perhaps the strongest authority for reversing the instant case on the question of discrimination against Negroes on grand juries. The outstanding fact proved in the *Smith* case was that between the years 1931-

1938, five Negroes actually served on grand juries in Harris County, Texas; yet, the United States Supreme Court held that that was only token representation which was still tantamount to racial discrimination. Speaking through Mr. Justice Black, the Court (at p. 130) held:

> "Here, the Texas statutory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever. *But by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable . . .*" (Emphasis ours.)

The Court (at p. 131) further stated:

> ". . . Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service . . ."

And, in concluding his opinion (at p. 132), Mr. Justice Black said:

> ". . . Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintance, *discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them.* If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand." (Emphasis ours.)

Note the strong parallel between the situation that existed in the *Smith* case and that which has prevailed in

Judge Echezabal's court, where his grand jurors for 33 years have been drawn from the names of those outstanding citizens whom he knew personally or whom he recognized by their reputation in the community.

Whether the discrimination in Orleans Parish has been accomplished ingeniously or ingenuously is not an established fact. It is an established fact, however, that there could not be a jury system devised that could have caused a more complete exclusion of Negroes from grand jury service. In Orleans Parish, exclusion of the Negro has been total. It has not mattered in Orleans Parish which section of the court selected the grand jury, or which method was employed by the respective judge, or when the selection was made, or whether there was a token number of Negroes in the wheel, or whether there had been a campaign to place large numbers of Negroes in the wheel, or who the district attorney was at the time. For, no matter what conditions prevailed at any given time, exclusion of Negroes remained complete, constant, consistent and continuous over the years. . . .

Certainly chance and accident alone could hardly have brought about this gross inequity, and whatever system has been employed, the conclusion is inevitable that there has been racial discrimination, when, in the memory of living men there has not been a single known Negro drawn for grand jury service in the history of Orleans Parish.

As was said in the case of *Patton* v. *Mississippi*, *supra*, 332 U.S. 463, 469:

> "We hold that the State wholly failed to meet the very strong evidence of purposeful racial discrimination made out by the petitioner upon the uncontradicted showing that for thirty years or more no Negro had served as a juror in the criminal courts of Lauderdale County. When a jury selection plan, whatever it is,

operates in such a way as always to result in the complete and long-continued exclusion of any representative at all from a large group of Negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand."

Another Louisiana case of great significance is the case of *Louisiana* v. *Anderson*, *supra*, 205 La. 710, 729; 18 So.2d 33, 40, which recognized the proposition that while the language of the state statute prescribing the method of grand jury selection may be valid and constitutional and not subject to attack by a person claiming racial discrimination, that the practical administration of that statute by public officials may deny the accused the equal protection of the laws in violation of the Fourteenth Amendment of the Federal Constitution.

It must be stated here that the attack on the grand jury which indicted petitioner is not on the basis of the lack of qualification of any one of the fine gentlemen who served conscientiously thereon during the six-month term. But, where a state method of selection of grand jurors is in conflict with the United States Constitution and the decisions of the United States Supreme Court, in which the Court has interpreted the applicable constitutional provision, established a criterion in such cases, and issued a mandate to the state courts, the said system of selection must be condemned as depriving the individual of his constitutional rights. As was said by Mr. Chief Justice Stone in *Hill* v. *Texas*, 316 U.S. 400, 406:

". . . Equal protection of the laws is something more than an abstract right. It is a command which the State must respect, the benefits of which every person may demand. Not the least merit of our constitutional system is that its safeguards extend to all—the least deserving as well as the most virtuous."

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

HERBERT J. GARON
532 National Bank of Commerce Bldg.
New Orleans, Louisiana

LEOPOLD STAHL
937 National Bank of Commerce Bldg.
New Orleans, Louisiana

Counsel for Petitioner

New Orleans, Louisiana, February 21, 1958

No. 550

In the Supreme Court of the United States

OCTOBER TERM, 1957

FREDDIE EUBANKS, PETITIONER

v.

STATE OF LOUISIANA

Writ of Certiorari to the Supreme Court of the State of Louisiana

ORIGINAL BRIEF ON BEHALF OF THE STATE OF LOUISIANA

JACK P. F. GREMILLION,
Attorney General
of the State of Louisiana

MICHAEL E. CULLIGAN,
Assistant Attorney General
of the State of Louisiana

LEON D. HUBERT, JR.,
District Attorney for the Parish of Orleans
of the State of Louisiana

INDEX

SUBJECT INDEX

CITATIONS

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May it please the Court:

Opinion Below:

Record (pages 106-116) shows opinion of Supreme Court of Louisiana reported in 232 La. 289, 94 So 2d 262.

JURISDICTION

Statement in petitioner's brief is correct, your honors being invested with jurisdiction in accordance with 28 U.S.C. 1257(3).

QUESTION PRESENTED

In the selection of a Grand Jury consisting of 12 men, by a district judge of Louisiana from a list

(such list not identifying any persons thereon as to color or race) of 75 names drawn by a Jury Commission from a general venire of 750 names (the general venire being legally constituted without any racial discrimination) the 12 men so selected were of the white race and although the white men so selected were not included on account of their race or negroes were not excluded because of their race, does such selection because no negro was selected violate State or Federal Constitutional rights in the absence of proof that such selection was a purposeful, systemactic exclusion of negroes solely on account of their race.

STATEMENT OF THE CASE

Facts related in petitioner's brief are correct.

SUMMARY OF ARGUMENT

This petitioner, a young negro male citizen of the State of Louisiana was convicted and sentenced to death for the murder of an elderly white female citizen of Louisiana committed during the commission of burglary, in violation of Article 30 of the Louisiana Criminal Code (R.S. 14:30).

Prosecutions for violations of criminal laws are instituted by affidavit, information or indictment, but in capital crimes none of our citizens, whether white or negro, shall be held to answer unless on a presentment or indictment by a Grand Jury (Const. of La. 1921—Article 1, Section 9).

The qualifications of a Grand or a Petit Juror are set forth in the Louisiana Revised Statutes of

1950, Title 15, Section 172. This section is verbatim Article 172 of the Code of Criminal Procedure of 1928 (Act 2 of 1928). Originally the statutory law of Louisiana (Act 110 of 1868, Sec. 3) contained a provision that selection be made without distinction as to race or color. This section and 18 Stat. 336 as amended, 18 U.S.C. 243 (which was passed 7 years after the Louisiana State) both provide there shall be no "distinction" (La. Statute) or "disqualification" (U. S. Statute) on account of race or color. In the Parish of Orleans the Jury Commission in accordance with LRS Title 15, Section 194 selects at large, impartially from citizens of the Parish of Orleans 750 qualified persons making a list thereof and place in the jury wheel on slips of paper showing thereon the name of the person, the number and the address corresponding to that on the list. This constitutes the general venire from which the names of prospective petit and grand jurymen are drawn. It is admitted no systematic inclusion or exclusion on account of race or color was practiced by the Jury Commission. From this jury wheel in accordance with LRS Title 15, Section 196 the Jury Commission draws 75 names preparing a list thereof which shows the name, the address, occupation and phone number of each person thereon and furnishes this list to the particular Judge of the Criminal District Court (which at the time of this indictment consisted of 6 sections each presided over by one Judge) who in rotation select a Grand Jury therefrom consisting of 12 citizens, who serve for a period of 6 months, with-

out compensation. As stated by petitioner in his brie it is not contended that this statute is unconstitutiona but that the public officials, (i.e. the Judges of th Criminal District Court for the Parish of Orleans who administer the statute "proscribe the negro rac in Orleans from jury service." Petitioner then con tends that it follows he has been denied the equa protection of the law. The same law applies in capita crimes to all persons whether the alleged perpetrato is white or negro. Neither the State nor a defendan is given any right of rejection of any grand juryman

The Constitution of the State of Louisiana (Art cle 1, Section 9) gives every person the right not t be held for a capital crime unless indicted by a Gran Jury. The Statute of the State of Louisiana whic fixes the qualifications of such jurymen it is ad mitted is constitutional.

The State of Louisiana fixes the number of per sons to constitute the grand jury (12) and in Orlean Parish requires the selection of 12 names by it judges from a drawing of 75 names. The persons s selected by the Judge may happen to be white, negro quadroon, octaroon, griff, male or female or any par ticular nationality.

Basically in our opinion the complaint to thi Court is that whereas six of the names on the Gran Jury list happened to be negroes, none of whom wer chosen, and on previous grand jury panels no negroe were selected then it follows that such alleged prim facie case of negroes not having previously served hav

ing been established, it is not rebuttable that Judge Echezabal did not purposefully systematically and intentionally exclude those names because they were negroes.

These laws are strictly procedural laws of the State of Louisiana. Its highest Court, the Supreme Court of Louisiana, has held in the instant case that such prima facie case has been rebutted and we submit great weight must be given its determination of the burden of proof and the weight of the evidence when your Honors make your determination.

ARGUMENT

It must be admitted by petitioner that neither the Constitution of Louisiana nor its law discriminate against the negro race by exclusion thereof from jury service. It must also be admitted no discrimination was practiced by the Jury Commission in the selection of the names present in the Jury wheel and no discrimination was practiced in the drawing of the names therefrom which were submitted to the Court for the selection to be made by the Court.

It is admitted that the law of Louisiana (R.S. 15, Section 172) does not violate any Federal or State Constitutional right.

If we understand petitioner correctly his whole contention is that because it was shown that no negroes had been previously selected for Grand Jury service by this Judge or other judges in New Orleans, racial or color exclusion has resulted by the use of the power to select which is vested in the judicial of-

ficer and that it must necessarily follow that a discrimination as to color must have been exercised in the drawing of the instant Grand Jury.

We respectfully submit that your honors are not required legally or morally in the instant case to reason from the probable to the actual, and find that the actual selection made by Judge Echezebal was evil or purposeful exclusion of negroes solely on account of their race.

It is not contended that the 12 Grand Jurymen selected in this case were not qualified or were biased or prejudiced against or for this negro or the negro race or that the men selected were not a cross section of the community. The whole gravamen of petitioner's complaint is simply that the Court in the exercise of its discretion did not place any negro on the Grand Jury, purposefully excluding persons solely on account of their color.

The question, therefore, in our opinion, is a question of judicial administration and exercise of judicial discretion, within the constitutional bounds.

In order to "select" a determination must be made by the district judge and to make a determination there must be an exercise of discretion. Our law requires that the judge must select 12 persons of well known good character and standing in the community out of 75 persons, regardless of race or color. No proof was offered that any of the judges abused their discretion and the burden of proof is upon the attacker of this jury's legality to overcome the legal presump-

tion that the Court discharged its duties properly. The attacker must show there has been a purposeful systematic and intentional discrimination by Judge Echezabel against negroes solely on account of their race which question must be determined by the facts in and evidence in this particular case.

Judge Echezabal's testimony (R. 90-94) follows:

"JUDGE FRANK T. ECHEZABAL, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

Q. Would you state your name for the record?

A. Frank T. Echezabal, Judge of Section "D" of the Criminal District Court for the Parish of Orleans.

Q. How long have you served as judge of the Criminal District Court of the Parish of Orleans?

A. Since October 1921.

Q. Without interruption?

A. Uninterrupted. I have been re-elected each time. This is my fourth term I am finishing now.

Q. Since the beginning of your term of office, is it correct to say that before Section "F" was added to the Criminal District Court of the Parish of Orleans, that you selected a grand jury every two and a half years?

A. Whether it happened every two and a half years or not I haven't computed it, but each time it became my turn to select a grand jury I have done so.

Q. Isn't it true it follows alphabetical order and true a grand jury serves each six months or two each year?

A. That's right. In one instance in my division I selected two grand juries in one year because I dismissed the first grand jury that I had selected for that year and then selected another.

Q. Have you ever selected a negro in any of your grand juries?

A. I have not.

(fol. 104) Q. Would you tell us Judge Echezabal, if you know of your own knowledge of any negro ever serving on a grand jury for the Parish of Orleans?

A. You mean my division?

Q. Any division, grand jury only.

A. Not my division. I could not state from personal knowledge.

Q. That's all I want, from personal knowledge.

A. I don't know sir, from personal knowledge.

Q. Would you tell us your method of selecting the 12 grand jurors that eventually serve on the grand jury?

A. Yes. I receive a list of 75 names which have been drawn, as I assume, lawfully out of the jury wheel by the Jury Commission of the Parish of Orleans, and I select 12 from that list.

Q. Do you send out letters or interview any of the 75 in advance of the selection?

A. Any?

Q. Any.

A. I will not say I have not interviewed any, but my method of selection is this generally. The lists I have received within the past several years contained data which is very informative and which I have considered very helpful in selecting a grand jury. The list, as I remember, contains the phone numbers of the prospective jurors, their occupations, the history of their service both as petty and as grand jurors, and from that list I select the 12. Many of those whom I select are known by me, if not personally, by reputation, and from that list I select my 12.

Q. In other words, you have at your disposal prior to selection or consider prior to selection, the names of prospective grand jurors, telephone numbers, residence, occupation and business they are employed in?

A. In many cases.

Q. It is frequently your policy to have chosen the 12 without interview?

(fol. 105) A. Yes. Generally, I would say that is correct, and may I add this: that the list makes no reference to race or religious creed.

Q. Would you state your age for the record?

A. Seventy-seven.

Q. And those seventy-seven years have been spent in the Parish of Orleans?

A. I was born in the City of New Orleans and I have never lived anywhere else.

Q. I take it you are generally familiar with the streets?

A. With the streets of the city?

Q. Yes, sir.

A. Fairly well, I would say.

Q. And the neighborhood?

A. You mean a particular neighborhood?

Q. Generally familiar.

A. I would say that.

Q. Getting to the selection of the grand jury that indicted this defendant, which was the Hartson grand jury which served from March 1, 1954, for a period of six months. Would you tell us Judge Echezabal, the manner of selecting those 12 gentlemen?

A. The same manner I selected all others as I have already stated.

Q. Did you interview any of those twelve?

A. Personally? Well, I can't recall whether I did or not.

Q. Do you know since 1936 negroes have been submitted to you on your venire list?

A. Well, I don't know for this reason. That on the day I select my grand jury, which is the first Monday of the month, the grand jury serves from the first Monday of one month to the first Monday of the ensuing six months, and on the same day I enroll my petty jury, and I cannot state which of the men and ladies standing in the courtroom have been summoned for petty jury service and grand jury service, but on all occasions I would say that there were (fol. 106) negroes in the courtroom and to repeat, whether there for or

summoned as grand jurors or petty jurors, sir, I don't know.

Q. But you are not positive, you don't know whether there were any negroes on the list of 75 in the last grand jury you selected.

A. I don't know, because as I have said, they come in and intermingle in the courtroom, probably 150 and sometimes less, have been summoned as petty jurors, and 75 on the grand jury, and sit indistinguishable in the courtroom. Whether negroes I have seen in my courtroom were summoned as grand jurors or petty jurors, I don't know.

Q. But I do understand from your testimony, you have not interviewed any negroes for the grand jury?

A. Nor white persons either. I may have one or two.

Q. But in this particular grand jury?

A. I can't say whether I did or not.

Q. No negroes?

A. No. But when I select them from my list I select those whom I believe are best qualified to serve on the grand jury and when I select them I don't know whether they are negroes are persons of the Caucasian race. I make no distinction sir. I would not exclude from my grand jury merely on account of race. I would not and I have never done it.

Q. Of the 12 you selected or the 12 you selected in the last grand jury, were men you knew about prior to selecting them?

A. Positively.

Q. Prior to impanelling them you knew a great deal about those gentlemen?

A. Yes.

Q. What was guiding you in checking as to qualification?

A. Good character, citizenship, availability and education to serve as grand jurors, because there are some men although they have a very good educational background, on account of temperament are not qualified to act either as petty or grand jurors.

(Fol. 107) Q. Do your minutes for March 1, 1954, reflect the manner of selecting the grand jury?

A. No, sir.

By Mr. Garon:

That's all."

Our Louisiana Constitution of 1921 and our laws are not innovations on this subject. The source of Article 1, Section 2 of our present Constitution of 1921 is Article 6 of our Constitution of 1879 which adopted in part the language of the 5th Amendment of the U. S. Constitution.

The source of Article 1, Section 9 of our Constitution is Article 5 of our Constitution of 1879.

Act 110 of 1868, Sec. 3 and U.S.C.A. Title 18, Section 243 passed in 1875 provide as to juries no exclusion of persons on account of race or color shall be made.

A review of the jurisprudence of the Louisiana Supreme Court and of the U. S. Supreme Court (your

Honors) cited in petitioner's brief we believe is that where over a period of years no negroes have been selected although available, a strong presumption is raised that such exclusion has been purposeful but an examination of the record—the factual situation—must be made in each case to determine this question of law. As shown by the cases cited in petitioner's brief our Louisiana Supreme Court has reversed our Louisiana district courts where after its examination of the factual situation in a particular case it has found that the evidence in the particular case did not overcome such a presumption. The cases in question as cited by petitioner are from parishes other than the Parish of Orleans where the Grand Jury was drawn from a general venire from which the Court found that the Jury Commission had excluded negroes from the general venire so that the drawing of the Grand Jury panel from such venire necessarily excluded the negro race from Grand as well as Petit Jury service.

As to the Parish of Orleans' Grand Jury system, only one case has previously been decided by our Supreme Court—*State v. Dorsey*, 207 La. 928.954, 22 So. 2d 273.281 in which the Louisiana Supreme Court held that the Judge had properly exercised and had not abused his discretion.

The Louisiana Supreme Court in this Eubanks case has upheld the selection made by Judge Echezebal and we sincerely submit its determination is entitled to great weight by your Honors. The personnel of our Supreme Court (consisting of seven members, one from each of our Supreme Court districts) com-

pares most favorably with any appellate court of any State or of the United States. It has zealously guarded the U. S. Constitutional rights of all defendants citing copiously from your Honors' decisions.

Petitioner's counsel, an outstanding, capable lawyer of the Parish of Orleans and formerly one of its assistant district attorneys, admits Judge Echezebal's integrity (with 38 years experience as a judge of the Criminal District Court Parish of Orleans) is unquestioned. In fact, this Judge has, whenever occasions required, acted as an associate justice ad hoc on the Louisiana Supreme Court bench.

In the Parish of Orleans we have entirely separate courts of criminal jurisdiction and separate courts of civil jurisdiction.

At the time this crime was committed the Criminal District Court of the Parish of Orleans consisted of six sections (divisions), designated as Sections A, B, C, D, E, F. The Grand Jury is selected for a term of six months by rotation according to the sections alphabetically. The Grand Jury which indicted Eubanks was selected by Judge Echezebal. Eubanks' case was allotted to Section F presided over by Judge Hertz in whose court the Jury found this defendant guilty of this atrocious murder, the motive being one of financial gain.

Each of these judges, therefore, were impannelling a Grand Jury once every three years. (These judges are all elected by the people for a term of 12 years)

All of our courts are cognizant of the fact that our New Orleans citizens are of different races, such as the white, the red, and the black. They are also cognizant of the fact that there has been an admixture of the races whose mixed ancestry have caused them to be denominated as quadroons, octaroons, and griffs. They are also cognizant of the fact that visual observation is (whether white or dark-skinned) not determinative of color. They are also cognizant of the fact that a person's name is also not indicative of his color or race or his nationality. Our Supreme Court is also cognizant of the ability of the judges of the Criminal District Court and of their general knowledge, their reputation, and their backgrounds prior to elevation to the Bench.

Each of these Judges who testified recited their method of selection of the Grand Jury. There is nothing in their testimony, in our opinion, which would warrant any conclusion that any one of these eminent jurists individually or collectively used any method to purposefully systematically include or exclude any person on account of race or color. In fact, petitioner's counsel in his brief page 29 states:

Whether the discrimination in Orleans Parish has been accomplished ingeniously or ingenuously is not an established fact."

Judge Echezabal's testimony clearly shows that no pattern or method was employed by him to discriminate against any person or class of persons.

He testified that the lists furnished do not identify

by color or race any of the individuals and he complied with the mandate of the legislature by picking 12 men known to him who had the required qualifications and were men of well known good character and outstanding residents of the community, which our law sets out as one of the requirements for jury service.

All the evidence in this case we respectfully submit is indicative of the fact that our judges in Orleans Parish have been and are selecting in accordance with all law competent Grand jurymen without paying attention to color, race or nationality.

Your Honors have consistently held the method of selection of a jury venire is within the purview of the individual states so long as the method does not exclude any person by reason of race or color or that the application of the method of selection by the administrative officers or the judiciary does not purposefully, systematically and intentionally exclude or include any person solely on account of race or color.

We quote in part from Your Honors majority opinion (Mr. Justice Murphy) in *Thiel v. Southern Pacific Co.*, 328 U. S. at Pages 220-221.

> "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. *Smith v. Texas*, 311 U. S. 128, 130; *Glasser v. United States*, 315 U. S. 60, 85. This does not mean, of course, that every jury must

contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.

The choice of the means by which unlawful distinctions and discriminations are to be avoided rests largely in the sound discretion of the trial courts and their officers. This discretion, of course, must be guided by pertinent statutory provisions."

The presumption of law is that our Orleans Parish judges perform their duties lawfully and do not abuse their discretion.

The evidence offered in this case in our opinion does not justify the defense counsel's contention that such evidence is proof of a purposeful, systematic and intentional exclusion or inclusion solely because of race or color. Again, we do not believe that the evidence in this case can be considered as proof to over-

come the presumption of law that this judge did do his full duty constitutionally in selecting this Grand Jury.

CONCLUSION

Whether there has been discrimination as to race or color in the selection of a Grand jury panel is a question of fact in every case.

To remand this case would require a determination by your Honors that the district judge in the instant case purposefully and intentionally excluded negroes from the Grand Jury panel solely because of their race and abused his discretion.

We respectfully submit there is no proof in this case to warrant such a determination and that the opinion of the Louisiana Supreme Court that no such exclusion took place and that there was no abuse of discretion must be given great weight and should not be disturbed.

The writ of certiorari heretofore granted and stay order issued should be recalled and petitioner's petition dismissed.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General
of the State of Louisiana

MICHAEL E. CULLIGAN,
Assistant Attorney General
of the State of Louisiana

LEON D. HUBERT, JR.,
District Attorney for the Parish of Orleans
of the State of Louisiana

CERTIFICATE OF SERVICE

I do hereby certify that a copy of this brief has
n served on Herbert J. Garon, Esq., Attorney for
itioner herein by depositing the same in a United
tes mail box, first class postage prepaid addressed
Mr. Herbert J. Garon, Attorney at Law, 532
ional Bank of Commerce Building, New Orleans,
isiana on 18th day of March, 1958.

MICHAEL E. CULLIGAN
Asst. Attorney General
of the State of Louisiana

Michael E. Culligan
Jack P. F. Gremillion
Attorney General
of State of Louisiana

APPENDIX

UNITED STATES STATUTES, 18 Stat. 336, 18 U.S.C. 243

Exclusion of jurors on account of race or color

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000. June 25, 1948, c. 645, 62 Stat. 696.

LOUISIANA CONSTITUTION, Article 1, Section 2

Due process; expropriation of private property for public purposes; just compensation

Section 2. No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid.

LOUISIANA CONSTITUTION, Article 1, Section 9

Criminal prosecutions; speedy public trial; jury; venue; witnesses; counsel; indictment and information; double jeopardy

Section 9. In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury; provided, that cases in which the penalty is not necessarily imprisonment at hard labor, or death, shall be tried by the court without a jury or by a jury less than twelve in number, as provided elsewhere in this Constitution; provided further, that all trials shall take place in the parish in which the offense was committed, unless the venue be changed; provided further, that the Legislature may provide for the venue and prosecution of offenses committed within one hundred feet of the boundary line of a parish. The accused in every instance shall have the right to be confronted with the witnesses against him; he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. Prosecution shall be by indictment or information; but the Legislature may provide for the prosecution of misdemeanors on affidavits; provided, that no person shall be held to answer for capital crime unless on a presentment or indictment by a grand jury, except in cases arising in the militia when in actual service in time of war or public danger; nor shall any person be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial, or where there

a mistrial, or a motion in arrest of judgment is sustained.

UNITED STATES CONSTITUTION, Amendment 14, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LSA-R.S. 15:172

PART XVIII. GRAND AND PETIT JURIES
SUB-PART A. QUALIFICATIONS FOR AND EXEMPTIONS FROM JURY SERVICE

The qualifications to serve as a grand juror or a petit juror in any of the courts of this state shall be as follows:

To be a citizen of this state, not less than twenty-one years of age, a bona fide resident of the parish in and for which the court is holden, for one year next preceding such service, able to read and write the English language, not under interdiction or charged with any offense, or convicted at any time of any felony, provided that there shall be no distinction made on account of race, color or previous condition of servitude; and provided further, that the district judge shall have discretion to decide upon the competency of jurors in particular cases where from physical infirmity or from relationship, or other causes, the person may be, in the opinion of the judge, incompetent to sit upon the trial of any particular case.

In addition to the foregoing qualifications, jurors shall be persons of well known good character and standing in the community.

LSA-R.S. 15:192

Qualification of jurors; competency of jurors

The jury commissioners for the Parish of Orleans shall qualify all persons before their selection as jurors, but the judges of the several district courts shall have the right to decide upon the competency of jurors.

LSA-R.S. 15:194

Selection of jurors; preparation, preservation and supplementing of jury list

The said commissioners shall select at large, impartially, from the citizens of the Parish of Orleans having the qualifications requisite to register as voters, the names of not less than seven hundred and fifty persons competent under this Code to serve as jurors. A list of these names shall be prepared, certified to by the commissioners, and kept as a part of the records of their office subject to the orders of the judges of the criminal district court of said parish. The names on said list shall be copied on slips prepared for the purpose, with the number and address corresponding to that on the lists and shall be placed in the jury wheel from which the drawing is to be made. No name shall be canceled from said lists or withdrawn from the jury wheel without an order of court, and the said list shall be a correct and perfect record of the names in the jury wheel. The said list shall be supplemented from time to time as the necessities of jury service may require. No drawing shall be made from a list of less than seven hundred and fifty (750) names, unless in an extraordinary case when tales jurors are ordered by one of the judges of the criminal district court, said judge may, in his discretion, in order to avoid delay, order said drawings from a list and jury wheel containing not less than five hundred (500) names, and in such cases it shall be the duty of said commissioners immediate-

ly after said drawing to refill the said wheel and complete said list so as to reach the required number of seven hundred and fifty (750) names.

LSA-R.S. 15:196

Drawing of grand jury: impanelment

Not earlier than the fifteenth and not later than the twentieth day of February of each year, and not earlier than the fifteenth and not later than the twentieth day of August of each year, the said commissioners shall draw from the said wheel the names of not less than seventy-five persons, which said names, upon a day next following said drawing, not a Sunday or a legal holiday or a legal half-holiday, shall be submitted by said commissioners to the presiding judge of that section of the criminal district court whose turn it shall happen then to be, to impanel the incoming grand jury; and said judge, from the names thus submitted, shall select twelve persons who shall constitute the grand jury for the Parish of Orleans for the grand jury term next ensuing. Each judge of the criminal district court shall, in rotation, select the grand jury for the Parish of Orleans. The order of sequence among the judges in the selection of the grand jury prevailing at the time this article goes into effect shall be preserved and continued. The judge of the section of the criminal district court who shall have appointed said grand jury shall have control and instruction over the grand jury, exclusive of all other judges of the criminal district court, and such grand jury shall make all findings and returns in open court to said judge; and in addition thereto, may make reports and requests in open court as provided by law, provided that if the judge to whom the

control of the grand jury shall belong shall not be from any cause in the actual discharge of his duties as judge, the judges of the criminal district court then present shall designate some other judge to impanel and instruct said grand jury, or to receive its returns and findings, as the case may be, and the judge so designated shall continue to act for the judge to whom the control of such grand jury shall belong until said last-mentioned judge shall return to the discharge of duties; provided, further, that the grand jury in office at the time of the adoption of this Code shall, until the expiration of that term of office, be under the control of the presiding judge of the section by whom it was selected and shall return all indictments and findings to said judge in open court.